

The background of the cover is a photograph of the interior of the Texas State Capitol dome. The image shows a grand, circular space with a high ceiling, ornate architectural details, and a balcony with a dark railing. Several framed portraits of men are visible on the walls. The lighting is bright, highlighting the white marble and gold accents of the interior.

# SUNSET ADVISORY COMMISSION

STAFF REPORT WITH FINAL RESULTS

*Finance Commission of Texas*

*Texas Department of Banking*

*Office of Consumer Credit Commissioner*

*Department of Savings and Mortgage Lending*

**2018–2019**  
**86TH LEGISLATURE**

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**DEPARTMENT OF SAVINGS AND**  
**MORTGAGE LENDING**

**SUNSET STAFF REPORT WITH FINAL RESULTS**  
**2018-2019**  
**86TH LEGISLATURE**

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## *HOW TO READ SUNSET REPORTS*

Each Sunset report is issued *three times*, at each of the three key phases of the Sunset process, to compile all recommendations and actions into one, up-to-date document. Only the most recent version is posted to the website. (**The version in bold is the version you are reading.**)

### 1. SUNSET STAFF EVALUATION PHASE

Sunset staff performs extensive research and analysis to evaluate the need for, performance of, and improvements to the agency under review.

*FIRST VERSION:* The *Sunset Staff Report* identifies problem areas and makes specific recommendations for positive change, either to the laws governing an agency or in the form of management directives to agency leadership.

### 2. SUNSET COMMISSION DELIBERATION PHASE

The Sunset Commission conducts a public hearing to take testimony on the staff report and the agency overall. Later, the commission meets again to vote on which changes to recommend to the full Legislature.

*SECOND VERSION:* The *Sunset Staff Report with Commission Decisions*, issued after the decision meeting, documents the Sunset Commission's decisions on the original staff recommendations and any new issues raised during the hearing, forming the basis of the Sunset bills.

### 3. LEGISLATIVE ACTION PHASE

The full Legislature considers bills containing the Sunset Commission's recommendations on each agency and makes final determinations.

**THIRD VERSION:** **The *Sunset Staff Report with Final Results*, published after the end of the legislative session, documents the ultimate outcome of the Sunset process for each agency, including the actions taken by the Legislature on each Sunset recommendation and any new provisions added to the Sunset bill.**

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# FINAL RESULTS





# FINAL RESULTS

## *Senate Bill 614*

*Finance Commission of Texas*

*Texas Department of Banking*

*Department of Savings and Mortgage Lending*

## *House Bill 1442*

*Office of Consumer Credit Commissioner*

### **Summary**

Since their last Sunset review 17 years ago, the three finance agencies have weathered the storms of the financial crisis well and maintained transparent, accountable practices even with recent decreased legislative oversight after the Legislature granted the agencies self-directed semi-independent status. Senate Bill 614 and House Bill 1442 continue each agency as a separate entity under the continued oversight of the Finance Commission. However, self-directed semi-independent status places greater responsibility for oversight, coordination, and efficiency on the Finance Commission rather than the Legislature. Given its elevated role, the Sunset Commission's recommendations ensure the Finance Commission sufficiently harnesses its coordination role over the three agencies to strongly press toward efficiency in operations.

Senate Bill 614 and House Bill 1442 align the agencies' practices with standard best practices of other regulatory agencies. Further, both bills decrease regulation, with Senate Bill 614 deregulating two unnecessary registration programs to ensure the least restrictive form of regulation necessary to protect the public, and House Bill 1442 allowing pawnshops to choose whether to require a license of their employees.

The following material summarizes results of the Sunset review of the finance agencies, including management actions directed to the agencies that do not require legislative action.

### **ISSUE 1 — Continue**

**Recommendation 1.1, Adopted** — Continue the Department of Savings and Mortgage Lending (SML) for 12 years, until 2031.

**Recommendation 1.2, Adopted** — Continue the Texas Department of Banking (DOB) for 12 years, until 2031.

**Recommendation 1.3, Adopted** — Continue the Office of Consumer Credit Commissioner (OCCC) for 12 years, until 2031.

## ISSUE 2 — *Management and Oversight*

**Recommendation 2.1, Not Adopted** — Require the finance agencies to remit all administrative penalties to the General Revenue Fund.

**Recommendation 2.2, Adopted** — Direct the Finance Commission to evaluate and update the agencies' key performance measures. (Management action – nonstatutory)

**Recommendation 2.3, Adopted** — Direct the Finance Commission to develop a budget policy that fosters more straightforward budgeting and fee setting. (Management action – nonstatutory)

**Recommendation 2.4, Modified** — Direct the Finance Commission to analyze and report on the implementation of their new fund balance policy adopted in February 2018. The Finance Commission would report each agency's change in total fund balance, types of funds reserved, and methodologies by which the agencies reduced their fund balances, if applicable, to the governor, lieutenant governor, speaker of the House, and Sunset Commission on September 1, 2020. Also, direct the Finance Commission to establish clear procedures for tracking performance toward fund balance goals established in their fund balance policy, including the new requirements that agencies present a plan to bring high balances into compliance and that reserve fund balance savings be probable, quantifiable, and non-routine. (Management action – nonstatutory)

**Recommendation 2.5, Adopted** — Direct the Finance Commission to develop standard policies regarding tracking and reporting travel expenditures. (Management action – nonstatutory)

**Recommendation 2.6, Modified** — Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies as originally recommended, but remove one requirement that the Finance Commission identify at least a 10 percent reduction in administrative costs. Also, as the Finance Commission studies how to minimize the duplication of agency functions, require the commission to evaluate not just cost efficiencies, but also changes that will make it easier for the public to interact with the agencies. (Management action – nonstatutory)

## ISSUE 3 — *Deregulation*

**Recommendation 3.1, Modified** — Allow pawnbrokers to choose whether to participate in the pawnshop employee license program to require licensure of their pawnshop employees. Specify requirements of the program administered by the Finance Commission.

**Recommendation 3.2, Adopted** — Discontinue registration of cemetery brokers.

**Recommendation 3.3, Adopted** — Discontinue registration of private child support enforcement agencies.

## ISSUE 4 — *Licensing, Department of Banking*

**Recommendation 4.1, Adopted** — Authorize the agency to establish license terms in rule for death care service licensees.

**Recommendation 4.2, Adopted** — Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.

**Recommendation 4.3, Adopted** — Update outdated appeals provisions to align with the Administrative Procedure Act.

**Recommendation 4.4, Adopted** — Direct DOB and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)

## **ISSUE 5** — *Licensing, Office of Consumer Credit Commissioner*

**Recommendation 5.1, Adopted** — Remove subjective licensure provisions for pawnshops and pawnshop employees.

**Recommendation 5.2, Adopted** — Authorize the agency to provide biennial license renewals for its licensees and registrants.

**Recommendation 5.3, Adopted** — Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.

**Recommendation 5.4, Adopted** — Authorize OCCC to disclose summary complaint resolution information to a complainant.

**Recommendation 5.5, Adopted** — Authorize OCCC to open an investigation immediately upon reasonable suspicion of a violation.

**Recommendation 5.6, Not Adopted** — Remove an outdated, overly restrictive burden of proof for proving regulatory violations.

**Recommendation 5.7, Adopted** — Give OCCC standard authority to take action against crafted precious metal dealers violating state regulations.

**Recommendation 5.8, Adopted** — Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.

**Recommendation 5.9, Adopted** — Standardize OCCC's burden of proof for ordering restitution in all regulatory programs.

**Recommendation 5.10, Adopted** — Authorize OCCC to order crafted precious metal dealers to pay consumer restitution.

**Recommendation 5.11, Adopted** — Update outdated appeals provisions to align with the Administrative Procedure Act.

**Recommendation 5.12, Adopted** — Direct OCCC and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)

**Recommendation 5.13, Adopted** — Direct the agency to make enforcement orders available online. (Management action – nonstatutory)

## **ISSUE 6** — *Licensing, Department of Savings and Mortgage Lending*

**Recommendation 6.1, Adopted** — Remove unnecessary, subjective licensure provisions for residential mortgage loan originators.

**Recommendation 6.2, Adopted** — Update SML's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.

**Recommendation 6.3, Adopted** — Direct SML and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)

**Recommendation 6.4, Adopted** — Direct SML to modify its penalty matrix to ensure consistent application of administrative penalties. (Management action – nonstatutory)

## **ISSUE 7 — Governance**

**Recommendation 7.1, Adopted** — Update the standard across-the-board requirement related to board member training, including a requirement for each board member to attest to both receiving and reviewing the training manual annually.

**Recommendation 7.2, Adopted** — Apply the standard across-the-board requirement related to alternative dispute resolution to the finance agencies.

**Recommendation 7.3, Adopted** — Authorize the finance agencies to establish advisory committees in rule as needed.

**Recommendation 7.4, Adopted** — Continue the finance agencies' required reports.

## **Provisions Added by the Legislature**

**Authority to regulate online lenders** — Clarify that OCCC has regulatory authority over all regulated loans made to persons located in Texas at the time the loan is made.

**Reducing reporting requirements** — Streamline OCCC reporting requirements by removing requirements to track financial services offered to agricultural and small businesses, track locations of lenders, and develop models for providing lower-cost alternatives to borrowers.

## **Fiscal Implication Summary**

The Sunset Commission's recommendations, as enacted in Senate Bill 614 and House Bill 1442, would not have a fiscal impact to the state, as the finance agencies receive no state funds and operate outside of the appropriations process due to the agencies' self-directed semi-independent status.

———— **SUNSET COMMISSION DECISIONS**  
**SEPTEMBER 2018**



# SUNSET COMMISSION DECISIONS

## Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the finance agencies, as well as modifications and new issues raised during the public hearing.

Since their last Sunset review 17 years ago, the three finance agencies have weathered the storms of the financial crisis well and maintained transparent, accountable practices even with recent decreased legislative oversight after the Legislature granted the agencies self-directed semi-independent status. The Sunset Commission recommended continuing each agency as a separate entity under the continued oversight of the Finance Commission.

Self-directed semi-independent status places greater responsibility for oversight, coordination, and efficiency on the Finance Commission rather than the Legislature. The Sunset Commission did not find significant concerns with the agencies, but adopted recommendations to ensure the Finance Commission sufficiently harnesses its coordination role over the three agencies to strongly press towards efficiency in operations. The Sunset Commission also required the Finance Commission to adopt best practices for oversight to ensure state funds continue to be used effectively and programs are coordinated well between the closely related agencies under its purview. Finally, the Sunset Commission adopted recommendations to align the agencies' practices with standard best practices of other regulatory agencies.

## ISSUE 1

*While Regulation of the Finance Industry Is Necessary, Texas Does Not Need Two Agencies Regulating Banks.*

**Recommendation 1.1, Adopted as Modified** — Continue the Department of Savings and Mortgage Lending for 12 years, until 2031.

**Recommendation 1.2, Adopted** — Continue the Texas Department of Banking for 12 years, until 2031.

**Recommendation 1.3, Adopted** — Continue the Office of Consumer Credit Commissioner for 12 years, until 2031.

## ISSUE 2

*The Agencies' Self-Directed Semi-Independent Status Calls for Greater Finance Commission Oversight and Coordination.*

**Recommendation 2.1, Not Adopted** — Require the finance agencies to remit all administrative penalties to the General Revenue Fund.

**Recommendation 2.2, Adopted** — Direct the Finance Commission to evaluate and update the agencies' key performance measures. (Management action – nonstatutory)

**Recommendation 2.3, Adopted** — Direct the Finance Commission to develop a budget policy that fosters more straightforward budgeting and fee setting. (Management action – nonstatutory)

**Recommendation 2.4, Adopted as Modified** — Replace the original staff recommendation with the following. Direct the Finance Commission to analyze and report on the implementation of their new fund balance policy adopted in February 2018. The Finance Commission would report each agency's change in total fund balance, types of funds reserved, and methodologies by which the agencies reduced their fund balances, if applicable, to the governor, lieutenant governor, speaker of the House, and Sunset Commission on September 1, 2020. Also, direct the Finance Commission to establish clear procedures for tracking performance towards fund balance goals established in their fund balance policy, including the new requirements that agencies present a plan to bring high balances into compliance and that reserve fund balance savings be probable, quantifiable, and non-routine. (Management action – nonstatutory)

**Recommendation 2.5, Adopted** — Direct the Finance Commission to develop standard policies regarding tracking and reporting travel expenditures. (Management action – nonstatutory)

**Recommendation 2.6, Adopted as Modified** — Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies as originally recommended, but remove one requirement that the Finance Commission identify at least a 10 percent reduction in administrative costs. Also, as the Finance Commission studies how to minimize the duplication of agency functions, require the commission to evaluate not just cost efficiencies, but also changes that will make it easier for the public to interact with the agencies. (Management action – nonstatutory)

## ISSUE 3

### *Three Finance-Related Regulatory Programs Are Not Necessary to Protect the Public.*

**Recommendation 3.1, Adopted as Modified** — Discontinue licensure of pawnshop employees. Specify that a pawnbroker is responsible for the acts of a pawnbroker's officers, directors, employees, and agents in the conduct of the pawnshop business.

**Recommendation 3.2, Adopted** — Discontinue registration of cemetery brokers.

**Recommendation 3.3, Adopted** — Discontinue registration of private child support enforcement agencies.

## ISSUE 4

### *Elements of the Department of Banking's Statute and Rules Do Not Conform to Common Licensing Standards.*

**Recommendation 4.1, Adopted** — Authorize the agency to establish license terms in rule for death care service licensees.

**Recommendation 4.2, Adopted** — Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.



**Recommendation 4.3, Adopted** — Update outdated appeals provisions to align with the Administrative Procedure Act.

**Recommendation 4.4, Adopted** — Direct DOB and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)

## ISSUE 5

### *Key Elements of the Office of Consumer Credit Commissioner's Statute and Rules Do Not Conform to Common Regulatory Standards.*

**Recommendation 5.1, Adopted** — Remove subjective licensure provisions for pawnshops and pawnshop employees.

**Recommendation 5.2, Adopted** — Authorize the agency to provide biennial license renewals for its licensees and registrants.

**Recommendation 5.3, Adopted** — Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.

**Recommendation 5.4, Adopted** — Authorize OCCC to disclose summary complaint resolution information to a complainant.

**Recommendation 5.5, Adopted** — Authorize OCCC to open an investigation immediately upon reasonable suspicion of a violation.

**Recommendation 5.6, Adopted** — Remove an outdated, overly restrictive burden of proof for proving regulatory violations.

**Recommendation 5.7, Adopted** — Give OCCC standard authority to take action against crafted precious metal dealers violating state regulations.

**Recommendation 5.8, Adopted** — Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.

**Recommendation 5.9, Adopted** — Standardize OCCC's burden of proof for ordering restitution in all regulatory programs.

**Recommendation 5.10, Adopted** — Authorize OCCC to order crafted precious metal dealers to pay consumer restitution.

**Recommendation 5.11, Adopted** — Update outdated appeals provisions to align with the Administrative Procedure Act.

**Recommendation 5.12, Adopted** — Direct OCCC and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)

**Recommendation 5.13, Adopted** — Direct the agency to make enforcement orders available online. (Management action – nonstatutory)

## ISSUE 6

### *Elements of the Department of Savings and Mortgage Lending's Statute and Procedures Do Not Conform to Common Regulatory Standards.*

**Recommendation 6.1, Adopted** — Remove unnecessary, subjective licensure provisions for residential mortgage loan originators.

**Recommendation 6.2, Adopted** — Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.

**Recommendation 6.3, Adopted** — Direct SML and the Finance Commission to develop an updated complaint process in rule. (Management action – nonstatutory)

**Recommendation 6.4, Adopted** — Direct the agency to modify its penalty matrix to ensure consistent application of administrative penalties. (Management action – nonstatutory)

## ISSUE 7

### *The Finance Agencies' Statutes Do Not Reflect Standard Elements of Sunset Reviews.*

**Recommendation 7.1, Adopted as Modified** — Update the standard across-the-board requirement related to Finance Commission member training. Require each Finance Commission member to attest to receiving and annually reviewing the training manual.

**Recommendation 7.2, Adopted** — Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the finance agencies.

**Recommendation 7.3, Adopted** — Authorize the finance agencies to establish advisory committees in rule as needed.

**Recommendation 7.4, Adopted** — Continue the finance agencies' required reports.

## ADOPTED NEW RECOMMENDATIONS

None adopted.

## Fiscal Implication Summary

These Sunset Commission's recommendations would not have a fiscal impact to general revenue, since fees assessed to the regulated industries must cover the costs of regulation due to the agencies' self-directed semi-independent status. Deregulating three unneeded regulatory programs would decrease costs to the industry and thereby revenue to the finance agencies by \$190,885 per year, but the decrease in revenue would be offset by an equal decrease in costs to administer the programs.

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**SUMMARY OF SUNSET  
STAFF RECOMMENDATIONS**



# SUMMARY

Since their last Sunset review 17 years ago, the three finance agencies have weathered the storms of the financial crisis well and maintained transparent, accountable practices even with recent decreased legislative oversight. The current Sunset review focused on setting the agencies up for continued success over the next 12 years as they prepare for changes to federal regulations, continued consolidation of the banking industry, and the expanding influence of technology companies constantly bringing new financial products to the market.

Sunset staff found the agencies have adapted well to the increased flexibility the Legislature granted in 2009 by removing them from the appropriations process through self-directed semi-independent status. Overall, both regulated industries and consumers have few complaints about the agencies' operations, and the agencies take their stewardship of state funds seriously. However, Sunset staff also took its work seriously to identify duplication and inefficiency in the overall regulatory structure. Sunset reviews place the burden of proof on justifying a continued need for each agency and regulatory function, with a focus on highlighting opportunities for smaller, smarter government. Staff recommends consolidating two agencies and eliminating three small regulatory programs, and focusing the Finance Commission on greater administrative efficiency and coordination between agencies.

While the Department of Savings and Mortgage Lending (SML) fulfills its responsibilities to regulate the state's savings banks and mortgage lenders, meeting minimum standards is not enough to reach the bar the Legislature sets for efficient, streamlined regulation in Texas. The agency's core functions largely duplicate those of the Texas Department of Banking (DOB) and fail to justify the need for a separate agency. A feature of self-directed semi-independent status is that the regulated industries can develop a sense of prerogative in relation to the agencies they fund and a preference to keep such agencies focused on their particular interests. For SML, this dynamic centers on just 26 banks and is not a justifiable reason to perpetuate a separate government bureaucracy. DOB has the sophisticated operations and infrastructure already in place to achieve greater economies of scale and hone the regulation of state savings banks and mortgage industry professionals to the minimum necessary to protect the public interest. While the two banking-related agencies would work better consolidated, Sunset staff concluded the Office of Consumer Credit Commissioner's (OCCC) distinct mission and regulatory scope focused on nonbank consumer lending continue to merit a separate agency.

Self-directed semi-independent status also places greater responsibility for oversight, coordination, and efficiency on the Finance Commission rather than the Legislature. Sunset staff paid special attention to comparing agency

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*Meeting minimum standards is not enough to reach the bar the Legislature sets for efficient regulation in Texas.*

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performance before and after the agencies gained self-directed semi-independent status and did not find significant concerns. However, Sunset staff concluded the Finance Commission has not sufficiently harnessed its coordination role over the three agencies to strongly press towards efficiency in operations. The Finance Commission also lacks several best practices for oversight to ensure state funds continue to be used effectively and programs are coordinated well between the closely related agencies under its purview.

Some stakeholders will note Sunset staff did not recommend changes to the state's regulation of credit access businesses, commonly known as payday or title loan providers. The regulatory landscape surrounding credit access businesses is uncertain and shifting at both the federal and municipal level, which is concerning to both the industry and consumer groups. However, Sunset staff focused on reviewing OCCC's operational responsibilities to enforce state statute as currently written, and found the agency is appropriately carrying out its current mandate.

A summary follows of the Sunset staff recommendations on the Finance Commission of Texas, Texas Department of Banking, Office of Consumer Credit Commissioner, and Department of Savings and Mortgage Lending.

## Issues and Recommendations

### *Issue 1*

#### **While Regulation of the Finance Industry Is Necessary, Texas Does Not Need Two Agencies Regulating Banks.**

DOB regulates 240 state-chartered banks with more than \$250 billion in assets, in addition to trust companies, money services business, and other financial service providers. SML regulates 26 state savings banks with approximately \$15 billion in assets, mortgage companies, and licensed residential mortgage loan originators. Differences between the banks regulated at each agency have diminished over time, and no other state regulates banks in two separate state agencies like Texas. Sunset staff concluded SML unnecessarily duplicates functions of DOB and is not needed to maintain Texas' healthy banking and mortgage lending industries. DOB examines banks ranging in size and business practice, including some of the largest mortgage lenders in the state, but retains a responsive and expert staff. Abolishing SML and transferring its functions to DOB would maintain and centralize expertise in mortgage lending regulation, develop economies of scale for banking regulation throughout the state, reduce bureaucratic duplication, and save the finance agencies at least \$6.9 million over the next five fiscal years. Given its distinct nonbank regulatory scope and responsibilities, maintaining OCCC as a separate agency under the Finance Commission continues to make sense to promote a healthy, fair credit environment for Texas consumers.

#### **Key Recommendations**

- Abolish the Department of Savings and Mortgage Lending as a separate state agency and transfer regulation of state savings banks and the mortgage industry to the Texas Department of Banking.
- Continue the Texas Department of Banking for 12 years.
- Continue the Office of Consumer Credit Commissioner for 12 years.

## *Issue 2*

### **The Agencies' Self-Directed Semi-Independent Status Calls For Greater Finance Commission Oversight and Coordination.**

In 2009, the Legislature delegated great authority to the Finance Commission to actively oversee the finance agencies and serve as a primary point of coordination across the financial industries under its purview. While the finance agencies have overall used their self-directed semi-independent status in a responsible manner, the Finance Commission has taken a siloed view of each agency and has not taken advantage of the similarities across agencies to direct best practices, systematically identify areas for improvement, or drive agency efficiency. The Finance Commission has not pushed the agencies to consider consolidating obviously duplicative administrative functions and has overseen two similar financial literacy programs with limited demonstrable impact and virtually no shared resources. Directing the Finance Commission to develop better oversight tools would allow it to actively identify inefficiencies across the agencies, limit growth in reserve fund balances, and continue to push the agencies to demonstrate the best return on investment.

#### **Key Recommendations**

- Require the finance agencies to remit all administrative penalties to the General Revenue Fund.
- Direct the Finance Commission to evaluate and update the agencies' key performance measures.
- Direct the Finance Commission to update its fund balance policy to limit growth.
- Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies.

## *Issue 3*

### **Three Finance-Related Regulatory Programs Are Not Necessary to Protect the Public.**

In fiscal year 2017, the finance agencies together regulated 64,334 individuals and businesses, overseeing millions of loans and billions of assets. State law requires the Sunset Advisory Commission to perform a critical examination of regulatory programs under review. Given the broad range of financial services and products overseen by the agencies, Sunset staff identified programs at the finance agencies where the regulation imposed by the state exceeds the level of regulation necessary to protect the public.

Statute requires OCCC to license both pawnshops as well as all the employees that work in pawnshops. This duplication of licensure results almost entirely in paperwork violations that provide no additional consumer protections. State law ultimately holds pawnshops accountable for operating lawfully, including the actions of their employees. Statute also unnecessarily requires DOB to register cemetery brokers and private child support enforcement agencies. Both registrant groups have fewer than 15 registrants, generate few consumer complaints, and have other provisions in law sufficiently protecting consumers.

### **Key Recommendations**

- Discontinue licensure of pawnshop employees.
- Discontinue registration of cemetery brokers.
- Discontinue registration of private child support enforcement agencies.

## ***Issue 4***

### **Elements of the Department of Banking’s Statute and Rules Do Not Conform to Common Licensing Standards**

In reviewing DOB’s regulatory authority, Sunset staff found some of the agency’s statute and rules do not match best practices for regulatory agencies. Specifically, the agency’s rules lack comprehensive detail to describe all aspects of its complaint process. DOB’s statute also lacks updated language on complaints, proper forum for appeals of agency decisions, and flexibility to extend license term lengths for death care providers longer than one year. Updating these provisions would allow the agency to streamline regulation without compromising agency oversight and ensure consistent tracking and reporting of complaints to the Finance Commission.

### **Key Recommendations**

- Authorize the agency to establish license terms in rule for death care service licensees.
- Update outdated appeals provisions to align with the Administrative Procedure Act.
- Direct DOB and the Finance Commission to develop an updated complaint process in rule.

## ***Issue 5***

### **Elements of the Office of Consumer Credit Commissioner’s Statute and Rules Do Not Conform to Common Regulatory Standards.**

Sunset staff found OCCC’s statute lacks several standard provisions common for other regulatory agencies, impeding consistent investigation and enforcement across all the license and registration types the agency oversees. In particular, the agency lacks several standard provisions for its newest regulatory program recently transferred from the Department of Public Safety, crafted precious metal dealers. The agency also lacks flexibility to streamline license renewal, has outdated statutory avenues for appeal, and lacks comprehensive rules describing all aspects of its complaint investigation and resolution process. Updating these provisions would help the agency consistently and timely enforce state laws and rules, streamline regulation across the agency’s programs, and improve tracking and reporting of complaints to the Finance Commission.

### **Key Recommendations**

- Authorize the agency to provide biennial license renewals for its licensees and registrants.
- Authorize OCCC to open an investigation immediately upon reasonable suspicion of a violation.
- Remove an outdated, overly restrictive burden of proof for proving regulatory violations.



- Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.
- Update outdated appeals provisions to align with the Administrative Procedure Act.
- Direct OCCC and the Finance Commission to develop an updated complaint process in rule.

## ***Issue 6***

### **Elements of the Department of Savings and Mortgage Lending's Statute and Procedures Do Not Conform to Common Regulatory Standards.**

If SML is not merged into DOB as recommended in Issue 1, several of SML's processes and rules need improvements to meet the Sunset Commission's best practices designed for effective regulation. The agency's penalty matrix lacks clear guidelines for the application of administrative penalties and the agency's complaint rules do not provide comprehensive information for complainants and licensees. Updating these provisions would promote consistent enforcement actions and ensure the Finance Commission receives comprehensive information about complaint activity.

#### **Key Recommendations**

- Update the agency's complaint processing provisions to meet Sunset's standard across-the-board requirements.
- Direct SML and the Finance Commission to develop an updated complaint process in rule.
- Direct the agency to modify its penalty matrix to ensure consistent application of administrative penalties.

## ***Issue 7***

### **The Finance Agencies' Statutes Do Not Reflect Standard Elements of Sunset Reviews.**

Among the standard elements considered in a Sunset review are provisions that the Sunset Commission applies across the board to all state agencies under review designed to ensure open, responsive, and effective government. The finance agencies' governing statutes do not include standard provisions relating to alternative dispute resolution, which would help rulemaking, and commission member training, which would ensure members understand the scope of the Finance Commission's rulemaking authority. In addition, the Sunset Act states that advisory committees are abolished on the date set for abolition of an agency unless the committee is expressly continued by law. Sunset staff found that the agencies should have the authority to create advisory committees in rule, and should reestablish the existing advisory committees in rule as needed.

#### **Key Recommendations**

- Update the standard across-the-board requirement related to Finance Commission member training.
- Authorize the finance agencies to establish advisory committees in rule as needed.

## Fiscal Implication Summary

Overall, recommendations in three issues would result in a \$6,164,845 gain to the General Revenue Fund and \$2,472,025 in savings to the finance agencies over the next five fiscal years. Since fees assessed to the regulated industries must cover the costs of regulation due to the agencies' self-directed semi-independent status, together the recommendations in this report would decrease costs to the industries by an estimated \$9,591,295 over the next five fiscal years. The fiscal implication of each recommendation is summarized below.

**Issue 1** — The recommendation to abolish SML and transfer its functions to DOB would result in a savings of \$1,388,994 per year to the finance agencies beginning in fiscal year 2020.

**Issue 2** — The recommendation to remit the finance agencies' administrative penalties to the General Revenue Fund would result in a gain to general revenue of approximately \$1,232,969 per year, beginning in fiscal year 2020, with a corresponding decrease in revenue to the finance agencies. The recommendation to streamline administrative functions where appropriate would result in savings to the finance agencies of at least \$422,975 per year, starting in fiscal year 2021.

**Issue 3** — Deregulating three of the finance agencies' unneeded regulatory programs would decrease costs to the industry and thereby revenue to the finance agencies by \$190,885 per year, but the decrease in revenue would be offset by an equal decrease in costs to administer the programs.

### *Finance Agencies*

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>	<b>Decrease in Revenue to the Finance Agencies</b>	<b>Savings to the Finance Agencies</b>
2020	\$1,232,969	\$1,423,854	\$1,579,879
2021	\$1,232,969	\$1,423,854	\$2,002,854
2022	\$1,232,969	\$1,423,854	\$2,002,854
2023	\$1,232,969	\$1,423,854	\$2,002,854
2024	\$1,232,969	\$1,423,854	\$2,002,854

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**COMMISSION AT A GLANCE**  
**APRIL 2018**



# COMMISSION AT A GLANCE

Created in 1943, the Finance Commission of Texas is the policymaking body that oversees the Texas Department of Banking, Office of Consumer Credit Commissioner, and Department of Savings and Mortgage Lending. In 2009, the Legislature gave the three agencies self-directed semi-independent status, removing them from the legislative appropriations process and placing heightened oversight responsibility on the Finance Commission. The Legislature also tasked the Finance Commission with ensuring that state depository and lending institutions function as a system.<sup>1</sup> To fulfill these roles, the Finance Commission carries out the following key activities:

- Hires and oversees the commissioner of each finance agency
- Conducts public hearings and adopts rules for each agency
- Approves the fees charged to regulated industries, agency expenditures, and overall agency performance
- Interprets the home equity lending provisions of the Texas Constitution
- Administers the Texas Financial Education Endowment
- Manages and directly receives reports from the internal auditor

## Key Facts

- **Finance Commission.** The Finance Commission consists of six public members and five industry representatives, appointed by the governor to serve six-year staggered terms, with a governor-designated chair. The *Finance Commission of Texas* chart details the current membership.
- **Executive director.** Though not a separate state agency, the Finance Commission appoints one of the three finance agency commissioners to serve as executive director to handle administrative tasks. The banking commissioner has served this role since May 2014.
- **Oversight scope.** Across the three finance agencies, the Finance Commission oversaw \$40.9 million in expenditures, \$43 million in revenue, \$39.8 million in reserve fund balances, and \$4.1 million in the Texas Financial Education Endowment grant fund in fiscal year 2017. Combined, the agencies employed 314 staff at the end

**Finance Commission of Texas**

Council Member	Term	Qualification
Stacy G. London Chair	2008–2020	Mortgage Industry Representative
Hilliard Shands III Vice Chair	2010–2018	Banking Industry Representative
Robert Borochoff	2016–2022	Public Member
Hector J. Cerna	2015–2020	Banking Industry Representative
Margaret Curl	2016–2022	Public Member, CPA
Phillip A. Holt	2016–2022	Consumer Credit Industry Representative
William M. Lucas	2011–2018	Savings Bank Industry Representative
Lori B. McCool	2009–2020	Public Member
Matthew Moore	2016–2022	Public Member
Paul Plunket	2008–2020	Public Member
Vince E. Puente Sr.	2016–2018	Public Member

of the fiscal year. The chart, *Finance Agencies Compared*, provides an overview, and the following *Agency at a Glance* sections contain additional detail on each agency's regulatory scope and activities.

The Finance Commission approves the agencies' rules and budget, but has no direct role in licensing decisions, consumer complaints, or appeals of regulatory actions, which are completely under the purview of each agency's commissioner.

### ***Finance Agencies Compared – FY 2017***

Agency	Expenditures	Staff	Financial Industry Regulated	Number
Department of Banking	\$26.1 Million	178	Banks	240
			Trust Companies	33
			Foreign Bank Agencies	24
			Prepaid Funeral Contract Providers	375
			Perpetual Care Cemeteries	242
			Money Services Businesses	156
			Cemetery Brokers*	14
			Private Child Support Enforcement Agencies*	10
			Check Verification Entities*	2
Office of Consumer Credit Commissioner	\$9 Million	83	Motor Vehicle Sales Finance Providers	8,539
			Regulated Lenders	3,845
			Credit Access Businesses	2,046
			Pawnshops	1,565
			Pawn Employees	7,243
			Residential Mortgage Loan Originators (individuals)	326
			Property Tax Lenders	89
			Commercial Motor Vehicle Sales Finance Providers	39
			Registered Creditors*	7,371
			Refund Anticipation Loan Facilitators*	2,634
			Crafted Precious Metal Dealers*	1,061
Debt Management and Settlement Providers*	128			
Department of Savings and Mortgage Lending	\$5.8 Million	53	Savings Banks	26
			Residential Mortgage Loan Originators (individuals)	26,469
			Mortgage Companies	1,176
			Independent Contractor Loan Processor or Underwriter Companies	102
			Auxiliary Mortgage Loan Activity Companies	9
			Credit Union Subsidiary Organizations	4
			Financial Services Companies	1
			Mortgage Banker Entities*	396
Mortgage Servicers*	169			

\* Registrations with limited regulatory authority (not full licensure).

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 11.002(a), Texas Finance Code.

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**AGENCIES AT A GLANCE**  
**APRIL 2018**





# AGENCY AT A GLANCE

## TEXAS DEPARTMENT OF BANKING

In 1905, the Legislature assigned bank regulation to the superintendent of banking under the Commissioner of Agriculture, Insurance, Statistics and History, which was renamed the Department of Insurance and Banking in 1907. In 1923, the Legislature made the Texas Department of Banking (DOB) an independent agency to regulate the state's financial service industries, which now include state-chartered banks, trust companies, money services businesses, foreign banks, and the financial aspects of certain death care services in Texas. Overall, the agency's mission is to ensure that Texas has a safe, sound, and competitive financial services system. To fulfill this mission, the agency carries out the following key activities:

- Approves new charters, charter conversions, mergers, and other structural or operational changes for state-chartered banks, trust companies, and foreign banks operating in Texas
- Licenses and registers money services businesses, certain death care service providers, and other entities
- Examines regulated entities for safe and sound operations and compliance with state and federal laws
- Enforces the Texas Finance Code by investigating and resolving complaints and ordering consumer restitution or taking other disciplinary action

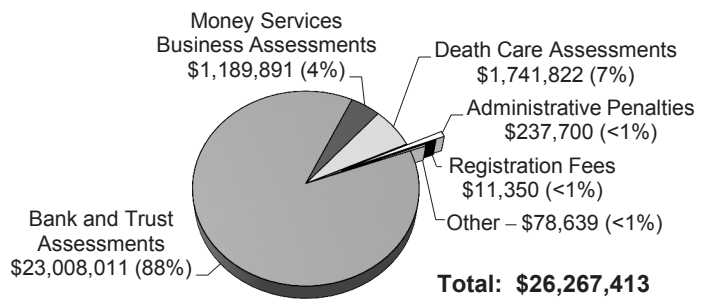
### Key Facts

- **Finance Commission.** The Finance Commission is the governor-appointed policymaking body overseeing the rules, budget, and operations of DOB as well as the Office of Consumer Credit Commissioner and the Department of Savings and Mortgage Lending. The Finance Commission hires each of the agency commissioners, who are directly responsible for all licensing and enforcement decisions. Refer to the *Commission at a Glance* section for more detailed information about the makeup and duties of the Finance Commission.
- **Funding.** In 2009, the Legislature gave the three agencies under the Finance Commission self-directed semi-independent status. As such, DOB does not receive a legislative appropriation and funds itself through fees on the regulated industry.<sup>1</sup> In fiscal year 2017, the agency collected about \$26.3 million in revenue, primarily from bank and trust assessments. That same year, the agency spent about \$26.1 million and at the end of the year maintained a fund balance of \$14.7 million. The pie charts on the following page, *Texas Department of Banking Revenue* and *Expenditures*, show the types and amounts of fees the agency collected from the industry and how the agency spent that money in fiscal year 2017.

A description of the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2015 to 2017 is included in Appendix A.

- **Staffing.** At the end of fiscal year 2017, DOB employed 178 full-time staff. About 121 staff travel throughout the state examining state-chartered banks, money services businesses, and other regulated entities. A comparison of the agency’s workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years is included in Appendix B.

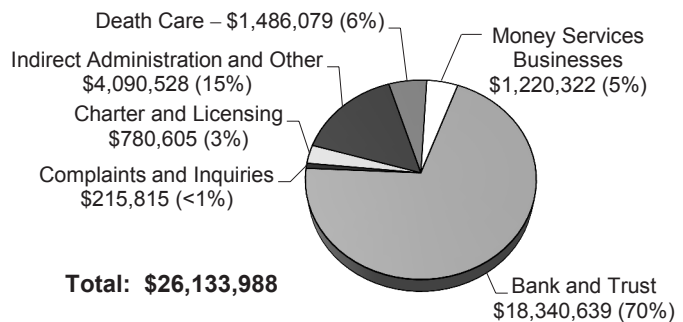
**Texas Department of Banking  
Revenue – FY 2017**



- **Chartering and licensing.** The agency regulates state-chartered banks, trust companies, money services businesses, certain death care service providers, and other individuals operating in Texas, as described on the following page in the table *DOB Licenses and Registrations*.

State-chartered banks are also regulated by either the Federal Deposit Insurance Corporation (FDIC) or the Federal Reserve Bank. Both federal and state laws dictate regulation of banks. At the end of fiscal year 2017, state banks in Texas had more than \$253 billion in assets under regulation.

**Texas Department of Banking  
Expenditures – FY 2017**



- **Examinations.** The agency performs regular, risk-based examinations of state-chartered banks, trust companies, and other financial services licensees to audit compliance with industry standards and federal and state regulations.

Banks and trusts. Examinations for state-chartered banks and trust companies generally follow the FDIC’s and Federal Reserve Bank’s guidelines for ensuring bank practices keep consumer funds and the overall banking system safe and sound. Each bank receives regular examinations by DOB, FDIC, or the Federal Reserve Bank to rate the bank’s practices in six key areas: capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk (commonly called CAMELS standards). While state trust companies do not fall under the jurisdiction of federal regulators, DOB’s trust exams follow similar industry standards and procedures. All banks and trust companies receive a rating between 1 and 5, with 1 being the best and 5 the worst. Federal and state laws protect the confidentiality of individual bank ratings. The agency completed 132 full examinations of its bank and trust entities in fiscal year 2017. A combined 95 percent of state chartered banks and foreign bank entities maintained a 1 or 2 rating at the end of fiscal year 2017.

Nonbanks. DOB also regularly examines other financial and death care service licensees to ensure compliance with state and federal laws. Examinations include activities such as evaluating internal controls and policies to determine the financial solvency of regulated entities. In fiscal year 2017, DOB completed 576 examinations of the agency’s nonbank licensees. Ninety percent of nonbank entities obtained a 1 or 2 rating at the end of fiscal year 2017.

**DOB Licenses and Registrations – FY 2017**

<b>Entity</b>	<b>Description</b>	<b>Number Licensed</b>
<b>Licenses</b>		
State-Chartered Banks	A financial institution licensed to receive deposits, manage monetary withdrawals, and provide loans for individuals or businesses.	240
Trust Companies	A company assuming legal responsibility to manage financial assets for another party. The most common service provided by trust companies is wealth management or estate planning services.	33
Foreign Bank Agencies	A bank that is owned by a foreign entity but operates in Texas.	24
Prepaid Funeral Contract Providers	A funeral home or cemetery that sells prepaid funeral merchandise or services to consumers who decide to secure future funeral costs.	375
Perpetual Care Cemeteries	A type of cemetery that uses a trust fund, which is established via investment of consumer dollars, to maintain the cemetery grounds.	242
Money Services Businesses	A business that transmits or converts money. Examples include currency exchangers, online money transmitters (i.e. PayPal), or prepaid credit cards.	156
<b>Registrations</b>		
Cemetery Brokers	An individual who resells, buys, or leases cemetery property – such as a grave plot.	14
Private Child Support Enforcement Agencies	A private entity, outside of the Texas Office of the Attorney General, that collects past due child support for a fee.	10
Check Verification Entities	A service designed to allow check-cashing entities the ability to confirm the authenticity of a paper check before issuing the check amount.	2
<b>Total Licenses and Registrations</b>		<b>2,482</b>

- **Complaints and enforcement.** In fiscal year 2017, the agency received 535 complaints. More than two-thirds of the complaints related to banks, with others primarily related to money services businesses and perpetual care cemeteries. The agency took 24 days on average to resolve complaints.

The agency took 35 enforcement actions in response to both complaints and findings during examinations, 17 of which were memorandums of understanding and board resolutions for banks. DOB also issued six consent orders, primarily against money services businesses operating without a license.

- **Consumer restitution.** Statute authorizes DOB to order entities found in violation of state law or rules to pay restitution to consumers.<sup>2,3,4</sup> The agency may also negotiate with licensees and unlicensed entities to repay consumers in response to consumer complaints. DOB ordered or negotiated \$207,726 in restitution in fiscal year 2017.

- .....
- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 16.003, Texas Finance Code.
  - <sup>2</sup> Section 154.056, Texas Finance Code.
  - <sup>3</sup> Subchapter H, Chapter 151, Texas Finance Code.
  - <sup>4</sup> Section 35.211, Texas Finance Code.

# AGENCY AT A GLANCE

## OFFICE OF CONSUMER CREDIT COMMISSIONER

In 1963, the Legislature created the Office of Regulatory Loan Commissioner to regulate lenders that make consumer loans. Over time, the Legislature gave the agency now known as the Office of Consumer Credit Commissioner (OCCC) regulatory purview over additional financial service industries, including pawnshops, motor vehicle finance providers, and credit access businesses (commonly known as payday or title lenders). OCCC's mission is to regulate financial services other than banks and to educate consumers and creditors to foster a fair, lawful, and healthy credit environment in Texas. To fulfill this mission, the agency carries out the following key activities:

- Licenses and registers consumer credit providers, including motor vehicle finance providers, pawnshops, credit access businesses, and lenders who charge in excess of 10 percent interest
- Examines licensees for compliance with state and federal laws
- Enforces the Texas Finance Code by investigating and resolving complaints against licensees and ordering consumer restitution or taking other disciplinary action
- Administers the Texas Financial Education Endowment grant program

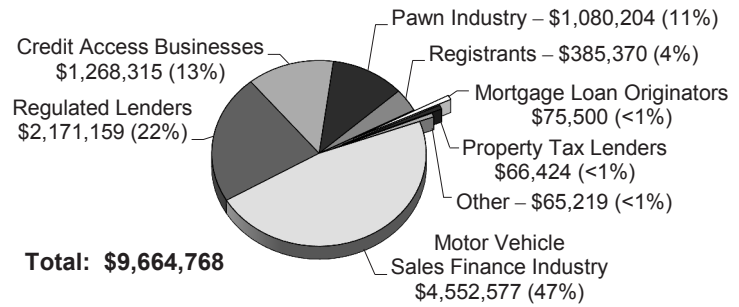
### Key Facts

- **Finance Commission.** The Finance Commission is the governor-appointed policymaking body that oversees the rules, budget, and operations of OCCC as well as the Department of Banking and Department of Savings and Mortgage Lending. The Finance Commission hires each of the agency commissioners, who are directly responsible for all licensing and enforcement decisions and other OCCC programs. Refer to the *Commission at a Glance* for more detailed information about the makeup and duties of the Finance Commission.
- **Funding.** In 2009, the Legislature gave the three agencies under the Finance Commission self-directed semi-independent status. As such, OCCC does not receive a legislative appropriation and funds itself through fees on the regulated industries. In fiscal year 2017, the agency collected about \$9.7 million in revenue for agency operations, primarily from licensing and registration fees, and spent about \$9 million on operations. At the end of fiscal year 2017, OCCC maintained a fund balance of \$12.4 million. The pie charts on the following page, *Office of Consumer Credit Commissioner Revenue* and *Expenditures*, show the types and amounts of fees the agency collected from the industry and how the agency spent that money on operations in fiscal year 2017. Not included in the charts, that year the agency also collected \$457,046 in revenue and dispersed \$162,254 in grants through the separate Texas Financial Education Endowment, described in more detail below.

A description of the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2015 to 2017 is included in Appendix C.

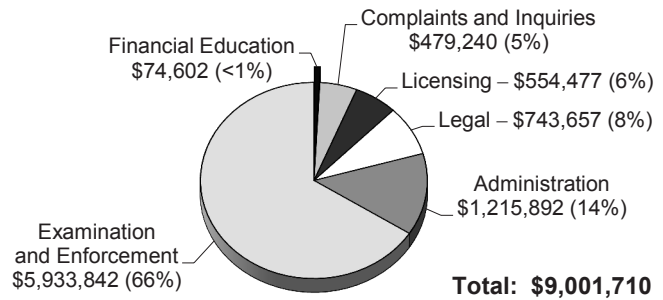
- **Staffing.** At the end of fiscal year 2017, OCCC employed 83 staff. About 48 staff travel throughout the state examining motor vehicle sales finance providers, regulated lenders, credit access businesses, and other regulated entities. A comparison of the agency’s workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years is included in Appendix D.

**Office of Consumer Credit Commissioner  
Revenue – FY 2017**



- **Licensing and registration.** OCCC determines eligibility and processes license applications and renewals for eight types of financial service entities and registers four categories of industries, as listed in the table on the following page, *OCCC Licenses and Registrations*.

**Office of Consumer Credit Commissioner  
Expenditures – FY 2017**



- **Examinations.** The agency performs risk-based examinations of its licensees to ensure compliance with state law. Examinations are prompted by the length of time since the entity’s last examination, problems identified in the entity’s previous examination, and complaints received related to the entity. All examined entities receive a score from 1 to 5, with a 1 rating indicating virtually no compliance issues and ratings of 4 and 5 indicating significant problems found. In fiscal year 2017, the agency performed 4,820 examinations. The chart, *Acceptable Examination Ratings by License Type*, lists the percent of licensees in each category that received an examination rating of 1, 2, or 3.

**Acceptable Examination Ratings  
by License Type – FY 2017**

Entity	Percent of Examinations That Received 1, 2, or 3 Rating
Pawnshops	99.30%
Credit Access Businesses	98.93%
Regulated Lenders	97.35%
Motor Vehicle Sales Finance Providers	85.81%
Property Tax Lenders	75.00%
<b>Across All Entity License Types</b>	<b>92.01%</b>

- **Complaints and enforcement.** In fiscal year 2017, OCCC received 2,130 complaints and took enforcement action in 48 cases (2 percent). More than half of the complaints related to motor vehicle sales finance providers; the rest primarily related to credit access businesses, regulated lenders, and pawn shops. The agency took 50 days on average to resolve complaints.

The agency took a total of 389 enforcement actions in response to both complaints and findings during examinations. The agency issued 229 cease and desist orders and 147 administrative penalties, primarily against motor vehicle sales finance providers and credit access businesses.

**OCCC Licenses and Registrations – FY 2017**

<b>Entity</b>	<b>Description</b>	<b>Number Licensed</b>
<b>Business Licenses</b>		
Motor Vehicle Sales Finance Providers	Companies selling motor vehicles on credit or accepting assignment of motor vehicle retail installment contracts.	8,539
Regulated Lenders	Companies making consumer loans at rates exceeding 10 percent.	3,845
Credit Access Businesses (commonly called payday or title lenders)	Companies assisting consumers in obtaining payday or title loans from third-party lenders.	2,046
Pawnshops	Companies accepting pledged goods as collateral for loans.	1,565
Property Tax Lenders	Companies paying property owners' delinquent property taxes and receiving the taxing unit's lien on the property.	89
Commercial Motor Vehicle Sales Finance Providers	Companies selling commercial motor vehicles on credit or accepting assignment of commercial motor vehicle retail installment contracts.	39
<b>Individual Licenses</b>		
Pawnshop Employees	Individuals employed by pawnshops who originate pawn loans.	7,243
Residential Mortgage Loan Originators	Individuals who negotiate and take applications for secondary or home equity residential mortgage loans.	326
<b>Registrations</b>		
Registered Creditors	Companies that sell consumer goods on credit or accept assignment of retail installment contracts for consumer goods, or are creditors in manufactured home purchases.	7,371
Refund Anticipation Lenders	Companies assisting consumers in obtaining loans from third-party lenders based on anticipated federal income tax refunds.	2,634
Crafted Precious Metal Dealers	Companies purchasing crafted precious metal, such as jewelry, from consumers.	1,061
Debt Management and Settlement Providers	Companies negotiating with creditors on behalf of consumers to seek more favorable terms on a consumer's outstanding debt.	128
<b>Total Licenses and Registrations</b>		<b>34,886</b>

- **Consumer restitution.** Statute authorizes OCCC to order entities to pay restitution to consumers when entities overcharge for fees or services.<sup>1</sup> The agency may also negotiate with licensees and unlicensed entities to repay consumers in response to consumer complaints. In total, OCCC ordered or directed licensees and registrants to pay consumers \$21,780,600 in restitution in fiscal year 2017, most of which related to the motor vehicle sales finance industry.
- **Texas Financial Education Endowment grants and financial education.** In 2012, the Legislature created the Texas Financial Education Endowment, funded by an annual fee of up to \$200 on each credit access business, to improve consumer credit, financial education, and asset building opportunities.<sup>2</sup> Beginning in 2013, every two years the Finance Commission has awarded reimbursable grants totaling approximately \$250,000 to nonprofits, school districts, and local governments. The Finance Commission has awarded 25 grants over the three two-year cycles. For the cycle beginning January 1, 2018, the Finance Commission awarded grants ranging from \$16,000 to \$33,000 to nine

programs. The textbox, *Example Grant Recipients*, lists three grant recipients, program categories, and award amounts. At the end of fiscal year 2017, the Texas Financial Education Endowment maintained a balance of \$4.1 million.

***Example Grant Recipients 2018–19 Cycle***

<b>Organization</b>	<b>Category</b>	<b>Award</b>
Family Services Association of San Antonio	Financial Coaching	\$33,000
Goodwill Industries of Central Texas	Adult Financial Education and Capability	\$33,000
Harris County Department of Education	K-12 Financial Education and Capability	\$19,000

In addition, OCCC informs consumers about credit use and their rights and responsibilities with regard to the credit industry. The agency makes presentations to community groups and schools, issues public service and press announcements, and provides online resources.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 14.251(b), Texas Finance Code.

<sup>2</sup> Section 393.628, Texas Finance Code.



# AGENCY AT A GLANCE

## DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

In 1961, the Legislature separated regulation of state savings and loan associations, commonly called thrifts, from the Texas Department of Banking and created the Savings and Loan Department under the Finance Commission. Today, the Texas thrift industry is made up entirely of state saving banks, whose assets primarily consist of residential mortgage loans. After granting the agency regulatory authority over mortgage brokers in 1999, the Legislature changed the agency's name to the Department of Savings and Mortgage Lending (SML). Now, the agency's mission is to ensure a healthy mortgage lending environment and maintain safe and sound state savings banks for Texans. To fulfill this mission, the agency carries out the following key activities:

- Approves new charters, charter conversions, mergers, and other structural or operational changes for state savings banks
- Licenses mortgage companies, residential mortgage loan originators, and other entities that originate mortgage loan services for properties in Texas
- Examines state savings banks for safe and sound operations and compliance with state and federal laws
- Examines mortgage licensees for compliance with state and federal laws
- Enforces the Texas Finance Code by investigating and resolving complaints against licensees and ordering consumer restitution or taking other disciplinary action

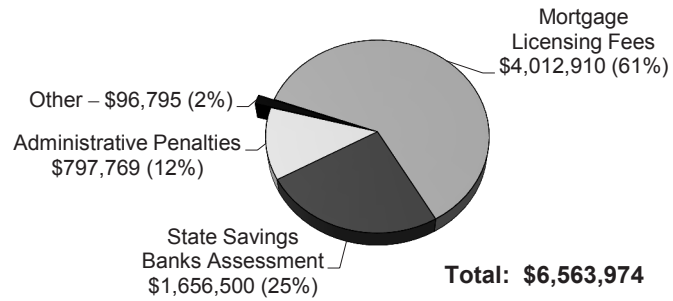
### Key Facts

- **Finance Commission.** The Finance Commission is the governor-appointed policymaking body overseeing the rules, budget, and operations of SML as well as the Department of Banking and the Office of Consumer Credit Commissioner. The Finance Commission hires each of the agency commissioners, who are directly responsible for all licensing and enforcement decisions. Refer to the *Commission at a Glance* for more detailed information about the makeup and duties of the Finance Commission.
- **Funding.** In 2009, the Legislature gave the three agencies under the Finance Commission self-directed semi-independent status. As such, SML does not receive a legislative appropriation, and funds itself through fees on the regulated industry. In fiscal year 2017, the agency collected \$6.5 million in revenue, primarily from licensing fees on mortgage industry licensees. That same year, the agency spent about \$5.8 million and at the end of the year maintained a fund balance of \$12.7 million. The pie charts on the following page, *Department of Savings and Mortgage Lending Revenue* and *Expenditures*, show the types and amounts of fees the agency collected from the industry and how the agency spent that money in fiscal year 2017.

A description of the agency's use of historically underutilized businesses in purchasing goods and services for fiscal years 2015 to 2017 is included in Appendix E.

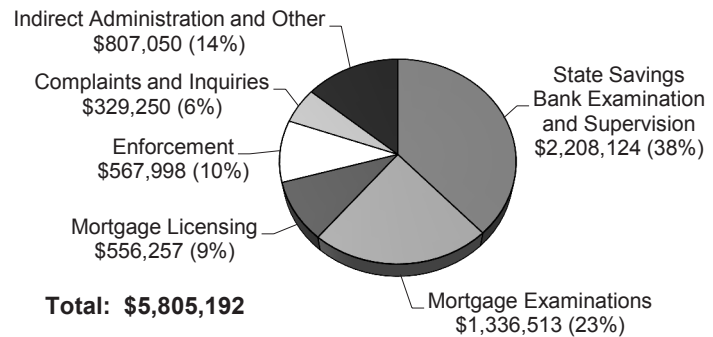
- **Staffing.** At the end of fiscal year 2017, the agency employed 53 staff. About 23 staff travel throughout the state examining state savings banks and mortgage industry licensees, and the remainder work at the agency's Austin headquarters. A comparison of the agency's workforce composition to the percentage of minorities in the statewide civilian workforce for the past three fiscal years is included in Appendix F.

**Department of Savings and Mortgage Lending Revenue – FY 2017**



- **Chartering and licensing.** The agency charters state savings banks in Texas, commonly called thrifts, and also licenses and registers individuals and companies involved in the residential mortgage industry, as described on the following page in the table *SML Licenses and Registrations*.

**Department of Savings and Mortgage Lending Expenditures – FY 2017**



Similar to commercial banks, state law requires that state savings banks be insured by the Federal Deposit Insurance Corporation (FDIC). A state savings bank may also choose to be a member of the Federal Reserve Bank. While federal law dictates much of the regulation of these entities, the state defines standards for the state savings bank charter, including how much a state savings bank must invest in non-commercial real estate loans. At the end of June 2017, the 26 state savings banks in Texas had more than \$20.6 billion in assets under regulation.

Federal law also specifies much of the licensure requirements for residential mortgage loan originators, who must be licensed to originate loans at licensed mortgage industry entities. In Texas, mortgage industry licensees originated \$87.5 billion in mortgage loans in calendar year 2016, the latest year for which data are available.

- **Examinations.** The agency performs regular, risk-based examinations of state savings banks and mortgage industry licensees to audit compliance with industry standards and federal and state regulations.

State savings banks. Examinations for state savings banks follow the FDIC's and, in some instances, Federal Reserve Bank's guidelines for ensuring bank practices keep consumer funds safe and sound. Each state savings bank receives a joint examination from SML and either the FDIC or the Federal Reserve Bank to rate the bank's practices in six key areas: capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk (commonly called CAMELS standards). All state savings banks receive a rating between 1 and 5, with 1 being the best and 5 the worst. Federal and state laws protect the confidentiality of individual bank ratings. The agency completed 23 examinations in fiscal year 2017, and all state savings banks had a composite rating of 1 or 2 as of September 30, 2017.

**SML Licenses and Registrations – FY 2017**

<b>Entity</b>	<b>Description</b>	<b>Number Licensed</b>
<b>Licenses</b>		
State Savings Banks (commonly called thrifts)	Banks with largely the same powers as commercial banks, but with the majority of the loan portfolio focused on residential lending.	26
Residential Mortgage Loan Originators	Individuals taking residential mortgage loan applications and offering or negotiating terms of residential mortgage loans, and employed by one of the regulated entities authorized to originate such loans.	26,469
Mortgage Companies (formerly called mortgage brokers)	Third-party lenders negotiating mortgage loan terms without lending their own money.	1,176
Independent Contractor Loan Processor or Underwriter Companies	Companies contracting with a licensed mortgage loan originator to perform loan processing or loan underwriting duties, without originating mortgage loans themselves.	102
Auxiliary Mortgage Loan Activity Companies	A nonprofit organization or state or federal agency involved in affordable home ownership lending programs, including issuing down payment assistance or building affordable homes for first-time home buyers.	9
Credit Union Subsidiary Organizations	An agency or company owned by a credit union primarily originating mortgage loans.	4
Financial Services Companies	A subsidiary of a nationally chartered bank performing the same services as a mortgage company.	1
<b>Registrations</b>		
Mortgage Bankers	Companies originating mortgage loans with their own funds.	396
Mortgage Servicers	Third-party companies contracted to service loans, who receive scheduled payments from borrowers on residential mortgage loans and make payments to the owner of the loan.	169
<b>Total Licenses and Registrations</b>		<b>28,352</b>

Mortgage industry licensees. SML examines mortgage industry licensees to ensure compliance with state and federal law when originating mortgage loans. Examinations include evaluating internal controls and policies to identify discriminatory practices and reviewing loan contracts to identify overcharges. In fiscal year 2017, SML completed 476 examinations of mortgage industry licensees. Of those examinations, 10 percent received ratings that indicated serious compliance problems. Licensees with less-than-satisfactory compliance must address and respond to issues identified within 30 days and receive more frequent follow-up examinations.

- **Complaints and enforcement.** In fiscal year 2017, the agency received 1,019 complaints and referred 54 (5 percent) for enforcement action. More than half the complaints related to mortgage bankers, with others primarily related to mortgage servicers, mortgage companies, and unlicensed entities. The majority of complaints were about loan servicing issues or misleading practices. The agency took 26 days on average to resolve complaints.

In fiscal year 2017, the agency issued 96 formal enforcement orders and 37 advisory letters resulting from both complaints and findings during examinations. SML issued 30 cease and desist orders, primarily for unlicensed activity, and assessed 14 administrative penalties, primarily against mortgage bankers and unlicensed entities.

- **Consumer restitution.** Statute authorizes SML to order licensees to pay restitution to consumers for any amount licensees received in violation of the statute. The agency may also negotiate with licensees and unlicensed entities to repay consumers in response to consumer complaints. In fiscal year 2017, SML ordered \$18,874 in restitution and negotiated \$114,623 in voluntary restitution for Texas consumers, mostly related to the mortgage industry.

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**ISSUES**



# ISSUE 1

## *While Regulation of the Finance Industry Is Necessary, Texas Does Not Need Two Agencies Regulating Banks.*

### Background

The Legislature created the Texas Department of Banking (DOB), Department of Savings and Mortgage Lending (SML), and Office of Consumer Credit Commissioner (OCCC) to oversee the majority of the finance industry in Texas. A single policymaking body, the Finance Commission of Texas, oversees the three finance agencies. The textbox, *Finance Agencies Legislative Timeline*, notes the major changes in their organization.

The Department of Banking primarily regulates state-chartered banks, trust companies, and money services businesses. The agency employs about 178 staff, 121 of whom are financial examiners who travel throughout the state to ensure compliance with state and federal regulations. The agency spent \$26.1 million in fiscal year 2017, generating most of its revenue from assessments on banks.

The Department of Savings and Mortgage Lending regulates state-chartered savings banks, commonly called thrifts, and the mortgage industry, including mortgage companies and residential mortgage loan originators. The agency employs about 53 staff, 22 of whom are financial examiners who travel throughout the state to ensure compliance with state and federal regulations. The agency spent \$5.8 million in fiscal year 2017, generating most of its revenue from mortgage industry licensees.

The Office of Consumer Credit Commissioner regulates nonbank consumer lenders, such as motor vehicle sales finance providers, pawnshops, payday and title loan providers, and property tax lenders. The agency employs about 83 staff, 48 of whom are financial examiners who travel throughout the state to ensure compliance with state regulations. The agency spent \$9 million on operations in fiscal year 2017, generating most of its revenue from examination fees paid by licensees.

### Findings

#### **Texas has a continuing need for state regulation of the financial industry.**

Overall, the Sunset review concluded the purpose of the finance agencies to ensure a safe and sound financial system in Texas and respond to consumer complaints continues to be needed, as discussed below. However, Sunset staff

#### **Finance Agencies Legislative Timeline**

- 1905** Bank regulation assigned to the superintendent of banking under the Commissioner of Agriculture, Insurance, Statistics and History
- 1923** Department of Banking made an independent agency
- 1943** Finance Commission created to oversee Department of Banking
- 1961** Department of Savings and Mortgage Lending separated from Department of Banking
- 1963** Office of Consumer Credit Commissioner created
- 2009** Finance agencies granted self-directed semi-independent agency status and removed from legislative appropriations process

identified three financial regulatory functions no longer needed, addressed separately in Issue 3.

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*State bank charters allow flexibility and are cheaper than federal charters.*

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- **State option for bank and savings bank charters.** Banking institutions in Texas have several beneficial state chartering options that should continue. The dual banking system in the United States allows banks to select a charter offered by the federal government or the states, with either option allowing banks to conduct business in all 50 states. Maintaining a state charter keeps an option closer to the community and keeps the state in a better position to assess market forces and overall industry health. Within the state banking system, banks can choose between a traditional commercial bank charter at DOB or a state savings bank charter at SML focused on residential mortgage lending. These options allow flexibility in bank business models and encourage bank activity in community mortgage lending. State charter options are also significantly cheaper than federal charters, making state charters more attractive for smaller community banks.
- **Safety and soundness of Texas' banking system.** Both DOB and SML examine the banks under their purview on a regular basis to ensure solvency and that citizens have access to deposits. Working with either the Federal Deposit Insurance Corporation (FDIC) or the Federal Reserve Bank, depending on the bank's affiliation, the agencies' examinations check for compliance with applicable state and federal banking law and that banks administer operations in a safe and sound manner, according to established national standards. Without effective supervision, depository services might become less available to Texans, threatening the state's economy.
- **Fair credit environment for consumers.** Both SML and OCCC oversee important aspects of the consumer credit industry in Texas. SML regulates entities and individuals who originate and service residential mortgage loans, while OCCC oversees nonbank lenders. OCCC's responsibility includes second-lien mortgage lenders, consumer loan companies, pawnshops, motor vehicle sales finance providers, property tax lenders, and companies that finance the sale of their goods and services. Both OCCC and SML check regulated entities' compliance with state credit laws, which the Legislature designed starting in 1876 to ensure a healthy and fair credit environment. SML investigated 1,019 complaints in fiscal year 2017 and ordered or negotiated \$133,497 in restitution for consumers due to mortgage industry licensees overcharging Texans. In the same year, OCCC investigated 2,130 complaints and ordered or directed \$21,780,600 in restitution for consumers. Both agencies require lenders to use clear contracts stating loan terms in plain language and provide information on how to file complaints against lenders.

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*OCCC investigated 2,130 complaints and directed \$21.8 million in restitution for consumers last year.*

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### **Texas' current structure for regulating banks in two separate agencies is duplicative and outdated.**

In 2001, Sunset staff identified duplication in the regulation of banks and recommended abolishing SML.<sup>1</sup> The Legislature ultimately continued the



current structure, but the issue of duplication and outdated regulation did not diminish over the last 17 years. In this review, Sunset staff again reviewed the structure and functions of the finance agencies with fresh eyes and found many of the same arguments from 2001 are still relevant today, as described below.

- **Industry trends.** An overall industry trend toward consolidation reinforces the importance of monitoring risks to community banks and ensuring responsive regulation. The commercial banking industry in Texas has both consolidated and grown in assets significantly since the last Sunset review. In 2000, DOB regulated 376 banks with \$86.2 billion in assets, and now oversees 240 banks with \$253.9 billion in assets.<sup>2</sup> Meanwhile, the state savings bank industry has fluctuated but overall experienced relatively stagnant net change over the same time period. In 2000, SML regulated 27 state savings banks with \$14.7 billion in assets, and now oversees 26 banks with \$20.6 billion in assets.<sup>3</sup> Without one regulator with a full view of community economies and needs, the state cannot quickly reallocate resources or regulatory attention when warranted.
- **Minor differences between state savings banks and banks.** Differences between banks' and state savings banks' powers and responsibilities are largely in the past and do not justify separate agencies to regulate each. Historically, state savings banks focused on housing and real-estate lending, while commercial banks covered the broad spectrum of consumer and commercial deposits, loans, real estate lending, and other financial services. Changes over time in state and federal law have permitted commercial banks and state savings banks to engage in similar lending and investment activities, blurring the distinction between these institutions. As highlighted in the textbox, *Functions Common to Both Banks and State Savings Banks*, the average consumer would not know the difference, as both types of charters frequently use the word "bank" in their name. While the main distinction is the requirement that state savings banks meet the Qualified Thrift Lender Test, meaning more than 50 percent of assets must be in real estate investments, many commercial banks have a similar business model.
- **Similar oversight.** Both agencies use similarly trained staff and nearly identical standards to ensure the safety and soundness of the banks they regulate. Both agencies conduct regular bank examinations using teams of examiners applying the same national industry standard rating system (CAMELS).<sup>4</sup> Each agency's examination reviews similar records, financial data, policies, and compliance with state and federal laws. Each agency partners with the FDIC or Federal Reserve Bank regulators (depending on the bank's membership) to take action when banks are not operating safely and soundly. Sunset staff reviewed the evaluation reports produced by both SML and DOB and found the examination procedures and subsequent findings very comparable.

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*Many banks regulated by DOB and SML have similar business models.*

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***Functions Common to Both Banks and State Savings Banks***

- Receive deposits and disburse withdrawals
- Lend money
- Offer checking and savings accounts
- Operate ATMs
- Underwrite personal and real estate loans
- Open branches in other states

- **Texas is an outlier.** Texas can maintain the option for a distinct savings bank charter without the need for a separate regulatory agency. No other state maintains two separate state agencies with two separate commissioners and staff to regulate commercial banks and state savings banks. In 2011, the federal government also merged its regulation of nationally chartered savings banks with commercial banks.

**The Department of Banking and Finance Commission have the infrastructure and expertise to fairly oversee state savings banks and mortgage lenders.**

- **Bank oversight.**

Sophisticated operations. The size and scope of DOB's operations dwarfs SML. DOB regulates nine times as many banks, with twelve times more assets under regulation. In 2017, DOB conducted 103 bank and 26 trust exams with 121 bank and trust staff, while SML conducted 23 examinations with 16 bank examination and supervision staff.

DOB has a dedicated division for training bank and trust examiners on specialized topics and therefore already has the infrastructure in place to train examiners to assess state savings banks' compliance with the Qualified Thrift Lender Test. DOB has dedicated, trained information technology examiners to test bank cybersecurity measures. SML does not have this level of training and expertise, relying on its federal counterparts to conduct cybersecurity examinations of state savings banks.

Both agencies' financial examiners work throughout the state and travel to banks to conduct examinations. However, DOB has four field offices with supervisory and administrative support; SML has none.

Responsive and comparable oversight. Both DOB and SML maintain similar ratios of 2.1 banks per examiner. DOB is able to timely respond to banks with the same oversight as SML, while examining a wider variety of banks ranging in size from \$26 million in assets to more than \$71 billion in assets.

Experience evaluating mortgage assets. As noted above, DOB already examines many banks with a focus on mortgage lending and examines bank subsidiary organizations, some of which focus on residential mortgage lending. DOB currently examines some of the largest mortgage lenders in the state and has long experience understanding and evaluating banks with similar business models as state savings banks.

- **Mortgage lenders.** Federal and state regulations apply to mortgage lending at banks, state savings banks, and mortgage companies. Combining DOB's expertise in examining mortgage lenders affiliated with state-chartered banks with SML's expertise in examining other aspects of the mortgage industry would allow for better oversight of the overall market. Transferring mortgage industry licensees to DOB along with state savings

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*DOB currently examines some of the largest mortgage lenders in the state.*

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banks would consolidate the expertise of mortgage lending within one agency. Additionally, DOB already has a dedicated division and expertise in licensing and overseeing examinations for nonbank entities, such as money services businesses.

- **Finance Commission oversight.** SML and DOB share a common policymaking board, the Finance Commission, which represents the perspective and interests of mortgage lenders, state savings banks, and commercial banks. As part of its 11-member, governor-appointed board, the Finance Commission has designated seats for a mortgage industry representative, a state savings bank representative, and two banking representatives. The Finance Commission is well positioned to oversee consolidation of the two agencies and safeguard the separate state savings bank charter and other unique aspects of the mortgage industry that provide value to Texans. Additionally, the Finance Commission can provide transparency into the consolidation process to consumers and stakeholders, hold DOB accountable for any complaints or concerns that arise, and monitor any unintended changes in mortgage industry regulation.

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*The Finance Commission is well positioned to safeguard the state savings bank charter.*

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### **Texas has a continuing need for the Office of Consumer Credit Commissioner.**

Maintaining the Office of Consumer Credit Commissioner as an independent agency under the Finance Commission makes sense to promote a healthy, fair credit environment for Texas consumers. While DOB and SML both primarily oversee safety and soundness of banks, OCCC has a different mission to enforce consumer protections in Texas' statute and constitution for nonbank lending.

The complexity and volume of the diverse industries under OCCC's jurisdiction denotes a continued need for a separate agency to perform these functions. The textbox, *Office of Consumer Credit Commissioner*, provides an overview of the agency's regulatory scope and activities. In 2016, OCCC's licensees made 18 million small loans ranging in average value from \$144 to \$5,187, and totaling more than \$9 billion.<sup>5</sup> Overall, OCCC investigates many more consumer complaints and negotiates more restitution than SML or DOB, given the nature of the regulation under each agency's purview.

#### **Office of Consumer Credit Commissioner – FY 2017**

- Licensed or registered 34,886 entities in 10 nonbank industries, including pawnshops, payday lenders, and motor vehicle sales finance providers.
- Conducted 4,820 examinations, investigated 2,130 complaints, and took 389 enforcement actions.
- Directed \$21 million in restitution for consumers.

Overall, the Sunset review found OCCC strikes an appropriate balance between protecting consumers and fostering a competitive business environment for lenders. Additionally, OCCC funds consumer education and financial literacy programs through the Texas Financial Education Endowment, awarding \$250,000 in grants to nine Texas nonprofits and educational programs in the 2018–2019 grant cycle. Finally, while organizational structures vary, most states use a state agency to regulate consumer credit transactions and oversee interest rates.

## Recommendations

### *Change in Statute*

#### **1.1 Abolish the Department of Savings and Mortgage Lending as a separate state agency and transfer regulation of state savings banks and the mortgage industry to the Texas Department of Banking.**

Having two separate agencies regulate two types of banks is clearly inefficient. This recommendation would abolish SML effective September 1, 2019 and formally transfer all current SML functions to DOB. The recommendation would also include the following requirements.

- Maintain the state savings bank charter, the state savings and loan charter, and the state bank charter. Consolidation of the two agencies regulating banks would not affect the powers inherent in each charter.
- Maintain current regulation of mortgage industry licensees. Transferring SML's mortgage licensing and examination functions to DOB would not affect the powers and responsibilities of the licensees.
- Require DOB to provide a formal and publicly available consolidation and transition plan to the Finance Commission by September 1, 2019, incorporating feedback from the savings bank and mortgage industries. Require DOB to demonstrate in the plan measures to ensure appropriate expertise and attention to carry out fair and effective regulation of mortgage lending and state savings banks.
- Require DOB to continue providing quarterly reports to the Finance Commission on new state savings bank charter applications, composite compliance scores of regulated entities, and any changes in charter, license, or examination standards that could impact asset investment in mortgage lending.
- Direct DOB to continue to work with OCCC to coordinate regulation of second-lien mortgage loan originators to avoid regulatory duplication.
- Direct Sunset staff to work with staff from the Texas Legislative Council and the finance agencies to draft legislation that ensures an orderly transfer of functions.

Consolidating bank examination and supervision within one state agency will allow DOB to monitor and report on the complete banking and mortgage industry in Texas, increasing the agency's ability to stay close to changes in local economies, continue to anticipate market changes, and address local, state, and federal regulatory impacts on community banks. While requirements differ, the process of examining and regulating state savings banks can be efficiently integrated into DOB functions.

Transferring mortgage industry regulation from SML to DOB along with state savings bank oversight will ensure the agency maintains expertise and focus on mortgage lending across the state.

Maintaining oversight by the Finance Commission will protect the integrity of the state savings bank charter and ensure DOB undertakes consolidation without decreasing the quality of regulation or discouraging investment in mortgage lending.

#### **1.2 Continue the Texas Department of Banking for 12 years.**

This recommendation would continue DOB until 2031 as a finance agency under the oversight of the Finance Commission.

### 1.3 Continue the Office of Consumer Credit Commissioner for 12 years.

This recommendation would continue OCCC until 2031 as a finance agency under the oversight of the Finance Commission, as currently structured.

## Fiscal Implication

These recommendations are expected to reduce costs to the industries regulated by SML, but would have no fiscal impact to the state. The Legislature granted all three finance agencies self-directed semi-independent status, removing them from the appropriations process and General Revenue Fund. As such, the Legislature made each agency responsible for charging fees to cover the cost of regulation, so any savings or costs would be passed on to the regulated industry.

Consolidating DOB and SML's administrative and executive staff in Recommendation 1.1 would save regulated industries at least \$6.9 million over the next five fiscal years, due to eliminating a minimum of nine duplicative positions at SML and their affiliated salaries and benefits. These savings could increase depending on how DOB chooses to organize and staff its new consolidated structure.

Recommendation 1.1 may impact the fees paid by SML-regulated industries. Mortgage industry licensees are currently subsidizing state savings bank regulation at SML, accounting for approximately 61 percent of SML's revenue but less than 49 percent of expenditures. Since DOB allocates costs to industries more precisely, mortgage industry annual fees could be reduced up to 29 percent, assuming the current cost of regulation does not change. For state savings banks, DOB's fees are on average 17 percent higher than SML's assessment fees. As a result, state savings banks may pay approximately \$4,979 more on average for annual assessments at DOB. However, increased economies of scale should result in reduced fees.

### Finance Agencies

Fiscal Year	Savings to the Finance Agencies	Change in FTEs
2020	\$1,388,994	-9
2021	\$1,388,994	-9
2022	\$1,388,994	-9
2023	\$1,388,994	-9
2024	\$1,388,994	-9

<sup>1</sup> Sunset Advisory Commission, *Finance Commission of Texas, Department of Banking, Savings and Loan Department, and Office of Consumer Credit Commissioner Sunset Staff Report*, accessed March 12, 2018, [https://www.sunset.texas.gov/public/uploads/files/reports/Finance%20Commission\\_Banking\\_Savings%20and%20Loan\\_Consumer%20Credit%20Staff%20Report%202000%2077%20Leg.pdf](https://www.sunset.texas.gov/public/uploads/files/reports/Finance%20Commission_Banking_Savings%20and%20Loan_Consumer%20Credit%20Staff%20Report%202000%2077%20Leg.pdf).

<sup>2</sup> As of June 30, 2017.

<sup>3</sup> As of June 30, 2017.

<sup>4</sup> All banks, including state savings banks and nationally chartered banks, are examined using the CAMELS rating system, which grades an institution's capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk. Examiners assign a composite CAMELS rating to each bank between 1 and 5, with 1 being the best and 5 being the worst.

<sup>5</sup> Office of Consumer Credit Commissioner, *2017 Report on Availability, Quality, and Pricing of Certain Financial Services and Consumer Loan Products*, accessed March 12, 2018, [http://occc.texas.gov/sites/default/files/uploads/reports/2017\\_study\\_consumer\\_loan\\_productsfinal.pdf](http://occc.texas.gov/sites/default/files/uploads/reports/2017_study_consumer_loan_productsfinal.pdf).



# ISSUE 2

## *The Agencies' Self-Directed Semi-Independent Status Calls for Greater Finance Commission Oversight and Coordination.*

### Background

In 1943, the Legislature created the Finance Commission of Texas to oversee the Texas Department of Banking (DOB), Office of Consumer Credit Commissioner (OCCC), and Department of Savings and Mortgage Lending (SML). The Finance Commission's 11 governor-appointed members hire each agency's commissioner who oversee the majority of the state's finance industry, including commercial banks, money services businesses, mortgage lending, and small consumer lenders.<sup>1</sup> In fiscal year 2017, the finance agencies' jurisdiction included 64,334 licensees and registrants and \$40.9 million in agency expenditures. Refer to the *Commission at a Glance* section of this report for more details on the makeup and duties of the Finance Commission.

In 2009, the Legislature removed the three finance agencies from the General Appropriations Act and legislative appropriations process, granting them self-directed semi-independent agency status and delegating key budget oversight duties to the Finance Commission.<sup>2</sup> Unlike the majority of state agencies, self-directed semi-independent agencies have the freedom to set their own fees and budgets, increase staffing levels, change performance measures, and prioritize expenditures and programs with only the approval of their governing boards. Self-directed semi-independent agencies also may carry forward reserve fund balances indefinitely, because they cannot rely on the state to pay for large capital expenditures or unforeseen expenses.

As a unique, umbrella policy body over three separate but related regulatory agencies, the Legislature tasked the Finance Commission with coordinating the three agencies and serving as the primary point of accountability so that state depository and lending institutions function as a system.<sup>3</sup> The Legislature also recognized the potential for operational duplication and inefficiency between the three agencies, specifically directing sharing of staff, equipment, and facilities to reduce administrative costs and promote efficiency without detracting from staff expertise needed to carry out each agency's unique responsibilities.<sup>4</sup>

### Findings

#### **The Finance Commission falls short of key best practices for agencies trusted with reduced legislative budget and performance oversight.**

Due to the degree of oversight delegated from the Legislature to the Finance Commission, Sunset staff closely examined key issues related to agency management, efficiency, and transparency. Sunset staff compared agency data before and after the agencies gained self-directed semi-independent status, including examining performance measures, staff turnover rates, salaries, travel expenditures, contracting policies, enforcement trends, and other high-risk areas where mismanagement or lax controls could impact the health of the state's financial industry or damage public trust. Overall, Sunset staff found no major concerns to justify changing the agencies' self-directed semi-independent

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*Sunset staff found no major concerns with the agencies' self-directed semi-independent status.*

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status. However, considering the autonomy the finance agencies enjoy, Sunset staff identified the following gaps in best practices needing attention.

- **Key performance measures.** Oversight bodies rely on key performance measures to track how well agencies fulfill their missions. Effective performance measures are especially important for the boards of self-directed semi-independent agencies, since the Legislature tasked these oversight bodies with ensuring efficient and transparent operations outside of normal legislative oversight. Well-designed performance measures should
  - measure the impact and quality of achieving a goal (e.g., percent of complaints resolved in a set amount of time), not just count the output, or volume, of an agency’s activities (e.g., number of complaints processed);
  - be within the agency’s control;
  - highlight priority areas of agency functions;
  - be tracked and reported over time to understand trends; and
  - be measured consistently to facilitate comparison across similar government functions when appropriate.

While the agencies track and report various factors to the Finance Commission each month, the finance agencies’ key performance measures lack elements of these best practices, hindering the Finance Commission’s ability to comprehensively monitor and compare performance across the three agencies and identify opportunities for improving outcomes. The chart, *Key Existing Performance Measures Compared to Best Practice Standards*, lists some of the agencies’ self-identified key performance measures and highlights the ways in which the measures fall short.

#### ***Key Existing Performance Measures Compared to Best Practice Standards***

<b>Performance Measure Standard</b>	<b>Example of Key Performance Measures Not Meeting Standard</b>
Demonstrate outcomes, usually set as a rate of performance, not just a count of volume outputs	<ul style="list-style-type: none"> <li>● OCCC tracks the number of investigations closed.</li> <li>● SML tracks the number of licensees examined.</li> </ul>
Be within the agency’s control	<ul style="list-style-type: none"> <li>● SML has a key measure setting targets for the number of applications processed, but has no control over how many applications it may receive in a given time period.</li> <li>● OCCC measures monies returned from licensees.</li> </ul>
Highlight priority areas of agency functions	<ul style="list-style-type: none"> <li>● DOB does not have any key performance measures related to its regulation of death care industries or legislative mandate to improve financial literacy.</li> <li>● None of the agencies’ key performance measures track operational efficiency over time, given self-directed semi-independent status.</li> </ul>
Measured consistently across agencies when applicable	<ul style="list-style-type: none"> <li>● SML measures percent of complaints answered within 10 business days of receipt of complete information.</li> <li>● OCCC tracks percent of complaints resolved within 90 days.</li> <li>● DOB does not have a key performance measure related to complaints.</li> </ul>



The Finance Commission's choice to keep some of the former legislative performance measures created prior to receiving self-directed semi-independent status was initially reasonable. However, nearly a decade later, the Finance Commission needs to now comprehensively assess which measures are still valuable for trend evaluation and which measures no longer meaningfully contribute to oversight. Without robust, comparable performance measures, the Finance Commission cannot know which agency under its purview resolves complaints most timely, which agency's examinations are most efficient, or whether financial education programs are meeting legislative directives.

- **Budget and fee setting.** Transparent, straightforward fees foster a stable regulatory environment. For self-directed semi-independent agencies, setting accurate fees and overall agency budgets on the front end is even more important to demonstrate overall stewardship of public funds and avoid the accumulation of large fund balances. Regulatory agencies should set fees to cover the anticipated cost of regulation for the upcoming budget cycle. In practice, the Finance Commission approves annual fee levels at an amount higher than the cost of regulation, with the expectation that the agencies will discount the extra revenue back to the licensees at the end of the fiscal year. For example, SML assesses a quarterly fee on the banks it regulates. Rather than lowering the fee, the Finance Commission has waived SML's fourth quarter assessment every year for the last five years. The agencies' attempts to pass savings on to the regulated industries is positive, but the continued adjustments in approved versus assessed fees obfuscate the true cost of regulation and overall demonstrate opportunities for improved budget-setting practices and oversight.
- **Fund balance growth.** Excessive fund balances allow fees paid by regulated industries to accrue in agency accounts without clear objectives or a service provided in return. While maintaining reserve funds to cover unexpected costs or smooth revenues due to changes in the market is an essential responsibility of self-directed semi-independent agencies, the Finance Commission has not carefully controlled or overseen the agencies' fund balances. From fiscal years 2010 to 2017, the finance agencies' total fund balances grew by 280 percent. While growth varied across agencies, each agency had at least \$12 million in reserve funds at the end of fiscal year 2017 — a significant amount for agencies with annual budgets ranging from \$6 million to \$21 million. In a 2017 audit, the State Auditor's Office noted SML's fund balance in particular, which has grown at a faster rate than the other two agencies.<sup>5</sup>

Even accounting for overall expenditure growth and the \$18 million the agencies have been collectively saving for a new building, the rate of growth is still significant and trending upwards, as shown on the chart on the following page, *Fund Balance Growth*. SML's fund balance, excluding the reserves for a new building, grew by 245 percent from fiscal years 2010 to 2017, despite SML's expenditures only growing 22 percent during that time period. OCCC's fund balance, excluding building reserves, grew by

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*The Finance Commission approves fee levels higher than the cost of regulation, then expects agencies to discount fees.*

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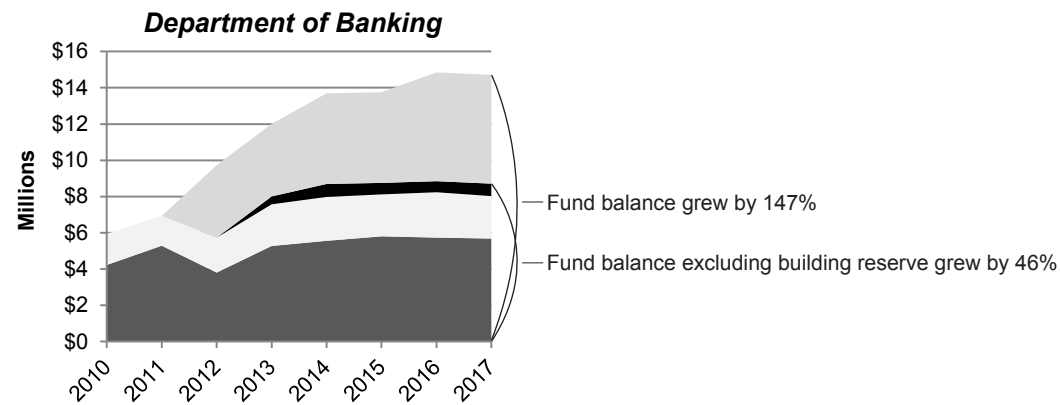
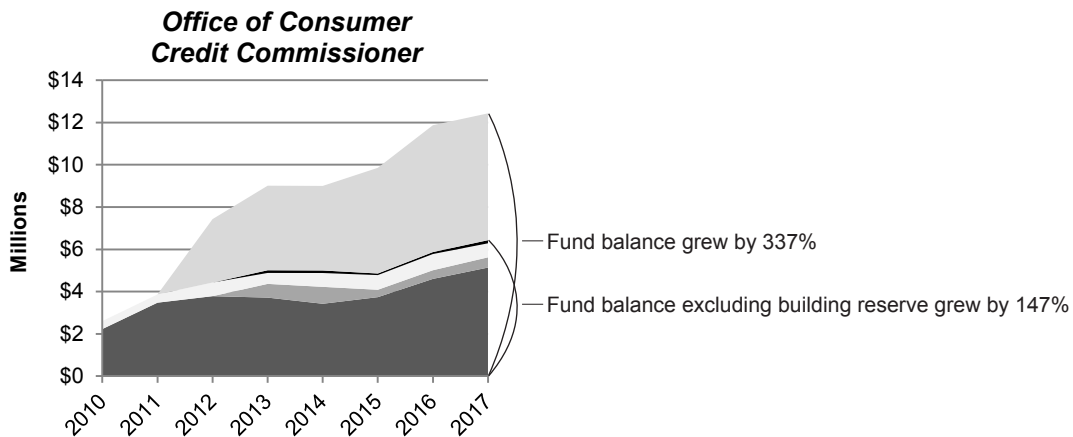
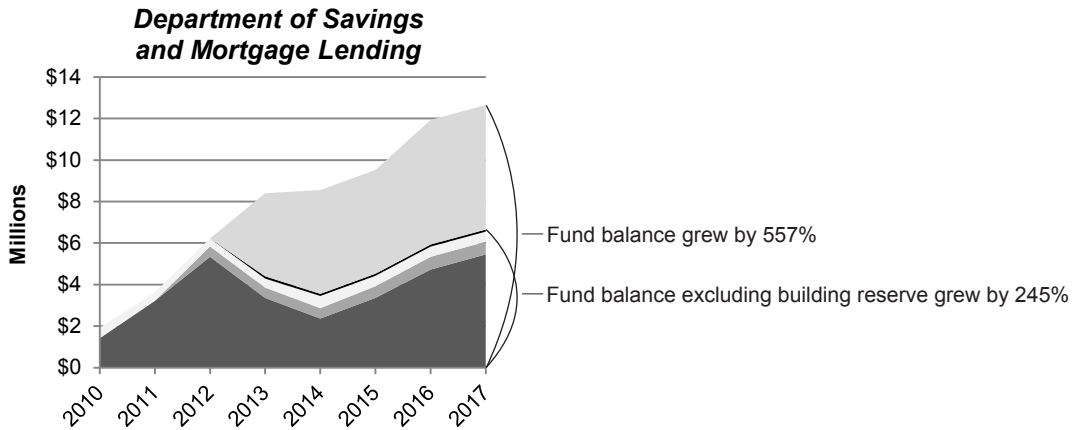


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*The finance agencies' fund balances grew by 280 percent over the last seven years.*

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### Fund Balance Growth FYs 2010–2017



- Building Reserve
- Lumpsum Benefit Payments for Retirement Eligible Employees
- Payroll and Accounts Payable
- Mortgage Enforcement Funds (SML)
- Information Technology (OCCC)
- Unreserved Fund Balance

147 percent, despite expenditures only growing by 87 percent over that same time period. DOB’s fund balance, excluding building reserves, grew by 46 percent while expenditures grew by 36 percent. The chart also details the types of funds the Finance Commission allows the agencies to keep.

Prior to 2018, the Finance Commission’s efforts to control the agencies’ fund balances failed to minimize growth in balances and resulted in various levels of compliance with Finance Commission policy among the agencies. The Finance Commission took improved steps to address the fund balances in February 2018 by adopting an updated fund balance policy that now directs agencies to save for “probable, quantifiable, and non-routine” needs in addition to specific allowable purposes such as building maintenance or information technology infrastructure.<sup>6</sup> The new policy caps one category of funds, unreserved funds, at no more than six months of budgeted operating expenditures and requires agencies projected to exceed this limit for four consecutive quarters to create a fund reduction plan. While this update is a step in the right direction, the policy still allows for accrual of extensive funds outside of the unreserved funds cap, including for any purposes deemed necessary by the Finance Commission. Also, the new policy has not been in effect long enough to judge its impact and the large balances remain.

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*The Finance Commission's previous efforts to control fund balances failed to minimize growth.*

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- **Administrative penalties.** The standard for state regulatory agencies applied during Sunset reviews is to remit administrative penalties to the General Revenue Fund as a check on their enforcement authority to ensure that it is not used as a proverbial “speed trap” to increase agency revenue. Allowing agencies to keep the penalties they assess is generally avoided, even for agencies that go through the appropriations process. Because the finance agencies do not experience the same level of external budget oversight, this safeguard is especially important to avoid the appearance of using penalties to self-support operations or increase fund balances. Though most other state regulatory agencies and other self-directed semi-independent agencies have statutory requirements meeting this standard, the three finance agencies do not, further compounding the budget problems noted above. The agencies appropriately do not set targets or budget for all penalty collections, but then must attempt to further discount fees or otherwise true-up charges to industry later in the year to account for the additional revenue. The textbox, *Administrative Penalties Assessed*, summarizes the most recent year’s penalty assessments.

<b>Administrative Penalties Assessed – FY 2017</b>	
DOB .....	\$237,700
OCCC.....	\$197,500
SML.....	\$797,769

- **Travel expenditure reporting.** Travel expenditures are a frequent source of legislative and audit concern because of the increased risk of misuse of state funds. The finance agencies’ staffs travel extensively for their core functions, specifically conducting examinations of licensees headquartered across the state and nation. DOB, as expected, has the largest travel expenditures among the agencies, and also grants travel advances for its employees, creating additional compliance risk. Taken together, the agencies spent more than \$3 million on travel in fiscal year 2017.

Overall, the Finance Commission does not receive consistent or detailed enough travel expenditure reporting from the three agencies to effectively monitor travel expenditures. Given the level of autonomy the Legislature granted self-directed semi-independent agencies, the Legislature requires the agencies to track and report an aggregate total of all travel expenditures to the governor, Senate Finance Committee, House Appropriations Committee, and Legislative Budget Board.<sup>7</sup> However, the Finance Commission does not require the agencies to regularly track and report more detailed spending on travel broken out by core agency functions, such as license examinations, separate from other travel, such as speaking engagements.

**Despite clear statutory direction, the Finance Commission does not maximize coordination of the finance agencies under its purview to increase efficiency and limit duplicative operations.**

Although the Legislature clearly directed the Finance Commission to oversee cost-effective administration, the Finance Commission has not successfully pressed the agencies to meaningfully reduce obvious duplication where practical. The textbox, *Limited Shared Resources*, lists the surprisingly few resources the agencies formally share. Overall, the finance agencies duplicate functions that could be more efficiently and effectively coordinated across agencies to improve outcomes, as described below.

<b>Limited Shared Resources</b>	
<ul style="list-style-type: none"> <li>• One office building and related maintenance costs and services</li> <li>• One receptionist position</li> <li>• One IT imaging system</li> <li>• Internal audit contract</li> <li>• Some shared purchasing, such as office supplies and legislative information services</li> </ul>	

- **Wholly separate administration.** Each agency maintains separate accounting, budgeting, human resources, information technology, and other support staff, totaled in the table, *Finance Agencies Administration Costs*. Despite the finance agencies sharing similar functions and reporting

**Finance Agencies Administration Costs – FY 2017**

Agency	Administrative Staff	Administrative Expenditures
DOB	19	\$2,398,201
OCCC	10	\$1,215,892
SML	8	\$615,656

to the same policymaking body, the Finance Commission has not instructed the agencies to share virtually any staff or administrative costs. Although much of the agencies’ substantive programmatic functions justify separate expertise, the agencies duplicate administrative functions without clear reasons except the status quo.

Other legally separate state agencies save administrative costs by creating economies of scale and contracting with their peers. For example, the Health Professions Council runs information technology systems for a number of health licensing boards, including the Texas State Board of Dental Examiners and the Texas State Board of Examiners of Psychologists, both of which maintain

confidential complaint records containing sensitive patient information. In another instance, the Texas State Board of Podiatric Medical Examiners contracted with the Texas Board of Nursing to perform accounting services. Independent state agencies can develop cooperative agreements to share staffing, contracts, and other resources to operate more cost effectively.

- **Poor financial education program coordination.** As required by state law, both DOB and OCCC operate financial literacy programs. Though the mission and goals of these programs clearly overlap, the agencies have not significantly coordinated their efforts to leverage minimal resources and provide the greatest impact to Texas consumers. Both programs have also been unsuccessful in defining clear goals or demonstrating meaningful returns on investment due to lacking performance oversight by the Finance Commission, as described below.

DOB. Statute directs DOB to improve the financial literacy of Texans and encourage access to mainstream financial products, primarily through promoting replication of programs that foster financial education, serving as a clearing house for information on financial literacy programs, and aiding and encouraging banks in the development and promotion of financial literacy programs.<sup>8</sup> In response to this direction, DOB provides financial literacy materials to regulated entities upon request, hosts webinars, and maintains a list of other financial education programs on its website and in a brochure.<sup>9</sup>

DOB has no key performance measures related to this program, but over the course of fiscal year 2017 reported having met with three banks that requested financial education information and participated in or hosted four webinars that provided financial education. These minimal efforts fail to demonstrate a measured impact.

OCCC. Statute generally directs OCCC to compile and post information on financial literacy programs and resources available to the public.<sup>10</sup> In 2017, OCCC's financial education program had a budget of \$74,602 and directly reached 342 people. Despite the overlap in direction from the Legislature, the Finance Commission did not direct OCCC and DOB to coordinate on these efforts, share resources to establish economies of scale, or create a plan to ensure return on investment of state funds in these programs.

In 2011, the Legislature gave broad direction to the Finance Commission to administer a financial education endowment to improve consumer credit, financial education, and asset building opportunities in the state funded with fees from credit access businesses, commonly referred to as payday and title lenders.<sup>11</sup> The Finance Commission responded with a grant program issuing fewer than ten grants totaling \$250,000 every two years — very small in relation to the \$1.5 billion in fees charged to consumers by credit access businesses in 2016 and the \$4.1 million in funds collected from industry for this purpose and currently held in the endowment.

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*Neither financial education program has clearly defined goals.*

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*The Finance Commission did not direct resource sharing between clearly duplicative programs.*

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*Each agency maintains separate complaint phone numbers, forms, and staff.*

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- **Separate complaint intake.** The three finance agencies receive more than 4,000 complaints and 70,000 inquiries each year combined. Each agency maintains separate phone numbers, email addresses, websites, and complaint forms. To complain properly, consumers must navigate not only the confusing web of state financial regulatory structures, but also multiple federal agencies such as the Consumer Financial Protection Bureau and Federal Reserve Bank, as well as other states' banking and financial regulatory agencies, and in some cases, even city or county regulatory departments.

During the 2001 review, Sunset staff recommended that the three finance agencies operate one statewide complaint intake system to streamline receipt of their complaints, centralize routing of nonjurisdictional complaints, and reduce duplication of standard procedures common across the three agencies.<sup>12</sup> Though the Sunset Commission did not adopt the recommendation, the potential benefits of consolidating complaint intake remain. Additionally, maintaining separate staff to refer calls, emails, and other complaints to the appropriate jurisdiction, inside or outside of the finance agencies, is duplicative with little benefit to the consumer. Issues 4, 5, and 6 in this report further address procedural gaps in complaint tracking, referral, and investigation at each agency.

## Recommendations

### *Change in Statute*

#### **2.1 Require the finance agencies to remit all administrative penalties to the General Revenue Fund.**

This recommendation would require that DOB, OCCC, and SML remit collected administrative penalties to general revenue, as is common practice for state regulatory agencies, including other self-directed semi-independent agencies. This change would help instill confidence in the agency's enforcement programs by removing the appearance that penalties are agency revenue generators, and allow for better budget forecasting and fund balance control.

### *Management Action*

#### **2.2 Direct the Finance Commission to evaluate and update the agencies' key performance measures.**

This recommendation would direct the Finance Commission to develop and adopt improved, outcome-based key performance measures for each of the finance agencies by September 1, 2019. The Finance Commission would identify the agencies' key functions and responsibilities, identify measurable outcomes directly related to their performance of these functions, and implement new performance outcome measures that adhere to best practices for agency oversight performance measures, such as

- measuring true rates of performance to a goal,
- measuring factors that are clearly within the agency's control,
- highlighting each priority area of the agency's duties,

- tracking measures over time to understand trends, and
- consistently measuring across similar agency functions to facilitate comparison.

Moving forward, the Finance Commission would require the agencies to document any changes to their performance goals, to minimize and document any changes to the calculation of their measures, and to keep any data used to document their performance measures for at least 12 years to facilitate agency oversight and evaluation in the future. The Finance Commission would receive reports on key performance measures that include trend data over a multi-year span, such as five years, in addition to the annual or quarterly data the agencies currently provide. Keeping some of the performance measures created by the Legislative Budget Board prior to receiving self-directed semi-independent status is reasonable, but the Finance Commission should assess which measures would be valuable to keep for trend evaluation and which measures the agencies do not need to continue to track.

Identifying and implementing better performance measures would allow the Finance Commission to accurately compare agency performance, track trends in agency performance against budget expenditures or larger market shifts, and identify areas for improvement across the financial regulatory system. Keeping performance measures consistent and with supporting documentation would allow legislative oversight bodies, such as the Sunset Commission, to substantiate changes in agency performance over time.

### **2.3 Direct the Finance Commission to develop a budget policy that fosters more straightforward budgeting and fee setting.**

This recommendation would direct the Finance Commission to develop a budget and fee-setting policy for the finance agencies that ensures consistent and reliable fees charged to regulated industries by September 1, 2019. This recommendation would require the finance agencies to set a high-level policy goal to more accurately forecast expenditures and revenues for the upcoming fiscal year and set fees on regulated industries more accurately upfront. The policy should limit the standard finance agency practice of charging industries one fee upfront and offering discounts later. While this recommendation may require a one-time change in rule to ensure flexibility in fee setting, the Finance Commission could implement this recommendation without requiring annual rulemaking for fees. The Finance Commission could, for example, set maximum fees in rule as applicable and then set exact fee amounts when approving the budget for the upcoming fiscal year. This recommendation would ensure the Finance Commission approves an accurate budget and associated fees in its public, open budget process and would allow regulated industries and the agencies to better predict the cost of regulation and plan accordingly.

### **2.4 Direct the Finance Commission to update its fund balance policy to limit growth.**

This recommendation would direct the Finance Commission to update its fund balance policy to set the total amount of allowable reserves and growth or change in the fund balance each year, and measure progress toward the established goal. The Finance Commission would review best practices and other agencies' fund balance policies to identify the maximum appropriate level of budgeted fund balance change each year. The Finance Commission should adopt this update to the fund balance policy by September 1, 2019. This recommendation also directs the Finance Commission to establish clear procedures for tracking performance towards fund balance goals, including the new requirements that agencies present a plan to bring high balances into compliance and that reserve fund balance savings be probable, quantifiable, and non-routine. This recommendation would ensure the finance agencies do not unnecessarily tie up regulatory fees in high fund balances without clear justification, and that the Finance Commission maintains active oversight.

## **2.5 Direct the Finance Commission to develop standard policies regarding tracking and reporting travel expenditures.**

This recommendation would direct the Finance Commission to develop a policy requiring the agencies to track and report travel expenditures with detail and consistency by May 1, 2019. The agencies should at minimum separately track and report travel expenditure dollar amounts for examinations, agency-provided trainings, other staff trainings, and other staff travel. This recommendation would shed light on how much each agency spends on travel and for what purpose, increasing Finance Commission oversight of a high-risk area of agency expenditures.

## **2.6 Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies.**

This recommendation would direct the Finance Commission to develop a plan to identify cost saving opportunities among duplicative agency functions. The Finance Commission should work with agency staff to map the regulatory system's functions and identify areas where services could be streamlined without diminishing necessary expertise or quality. The Finance Commission should prioritize, but not limit, assessing consolidation or improved resource sharing in the following areas.

- Complaint intake
- Budget and accounting
- Human resources
- Information technology
- Purchasing and procurement

The Finance Commission should identify duplicative functions by July 1, 2019, and report its findings and plan for consolidation by January 1, 2020. The findings and plan for consolidation report should address which areas of the agencies are duplicative and would benefit from improved resource sharing or consolidation.

The plan should identify at least a 10 percent reduction in administrative cost, due to removal of duplicative positions, stronger purchasing positions due to economies of scale, or other identified efficiencies. The primary goal of this recommendation is efficiency. The Finance Commission has not met statutory direction to coordinate across agencies to minimize administrative costs and therefore should be directed to identify specific streamlining targets. The plan should ensure clear lines of accountability for shared resources across finance agencies, likely through interagency contracts for services. The plan should articulate timelines for sharing or consolidation of identified functions.

If the findings do not include recommendations for consolidating each of the functions outlined above, the Finance Commission should document reasons why and articulate how the Finance Commission will oversee performance of this function and minimize duplication in the future.

Additionally, the Finance Commission's plan should include consolidating DOB and OCCC's financial education programs. The agencies' financial education programs overlap and fail to demonstrate clear goals and outcomes. In addition to consolidating, the financial education program should present and implement a plan to the Finance Commission for increasing impact, measuring success, and developing the program going forward, including eliminating program elements that do not meet performance goals or produce a high return on investment.



Reviewing and consolidating redundant agency functions will ensure the Finance Commission fulfills its legislative directive to efficiently oversee the finance agencies with shared staff, increased coordination and consistency across finance agencies, and minimized costs to the regulated industries. Consolidating the agencies’ financial education programs and requiring the agencies to develop clear goals would reduce duplication and increase the impact of the limited resources the agencies currently expend on these programs.

**Fiscal Implication**

Overall, the recommendation to direct administrative penalties to the General Revenue Fund would result in a gain to the state of \$6.2 million over the next five fiscal years, while the other recommendations would have no fiscal impact to the state, since the Legislature granted the finance agencies self-directed semi-independent agency status. As such, the Legislature made each agency responsible for charging fees to the regulated population to cover the cost of regulation outside of the appropriations process and the General Revenue Fund.

Recommendation 2.1 would increase revenue to the General Revenue Fund by an estimated \$1.2 million per year by requiring the finance agencies to remit penalties to the General Revenue Fund. In fiscal year 2017, DOB assessed \$237,700 in administrative penalties, OCCC assessed \$197,500, and SML assessed \$797,769, totaling \$1,232,969 across the three agencies.

Recommendation 2.6 is estimated to save the agencies and thereby the regulated industries a minimum of \$1,691,900 over the next five fiscal years. Directing the Finance Commission to fulfill its statutory responsibilities to maximize administrative efficiency would decrease costs across the finance agencies. Recommendation 2.6 sets a goal of a 10 percent reduction in administrative costs. In fiscal year 2017, DOB spent \$2,398,201 on administration, OCCC spent \$1,215,892, and SML spent \$615,656, totaling \$4,229,749. A 10 percent reduction in those costs would lead to a total savings of \$422,975 per year after the Finance Commission implements the plan starting in fiscal year 2021.

The other recommendations, requiring the Finance Commission to develop best practice policies for better oversight of the finance agencies, can be accomplished within existing resources, and would not have a significant impact on agency expenditures.

***Finance Agencies***

<b>Fiscal Year</b>	<b>Gain to the General Revenue Fund</b>	<b>Cost to the Finance Agencies</b>	<b>Savings to the Finance Agencies</b>
2020	\$1,232,969	\$1,232,969	\$0
2021	\$1,232,969	\$1,232,969	\$422,975
2022	\$1,232,969	\$1,232,969	\$422,975
2023	\$1,232,969	\$1,232,969	\$422,975
2024	\$1,232,969	\$1,232,969	\$422,975

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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 11.102, Texas Finance Code.
  - <sup>2</sup> Chapter 16, Texas Finance Code.
  - <sup>3</sup> Section 11.002, Texas Finance Code.
  - <sup>4</sup> Section 11.204, Texas Finance Code.
  - <sup>5</sup> State Auditor's Office, *An Audit Report on the Department of Savings and Mortgage Lending: A Self-directed, Semi-independent Agency*, accessed March 12, 2018, <http://www.sao.texas.gov/reports/main/17-034.pdf>.
  - <sup>6</sup> Finance Commission of Texas, *Finance Commission Meeting Packet February 16, 2018*, accessed March 12, 2018, <https://www.fc.texas.gov/Packet/fc-021618.pdf>, 19–20.
  - <sup>7</sup> Section 16.005(c), Texas Finance Code.
  - <sup>8</sup> Section 12.1085, Texas Finance Code.
  - <sup>9</sup> Texas Department of Banking, *Department of Banking Priorities for Fiscal Year 2017 – With Year-End Accomplishments*, accessed March 12, 2018, <https://www.fc.texas.gov/Packet/fc-102017.pdf>, 27–28.
  - <sup>10</sup> Section 14.1025, Texas Finance Code.
  - <sup>11</sup> Section 393.628, Texas Finance Code.
  - <sup>12</sup> Sunset Advisory Commission, *Finance Commission of Texas, Department of Banking, Savings and Loan Department, and Office of Consumer Credit Commissioner Sunset Staff Report*, accessed March 12, 2018, [https://www.sunset.texas.gov/public/uploads/files/reports/Finance%20Commission\\_Banking\\_Savings%20and%20Loan\\_Consumer%20Credit%20Staff%20Report%202000%2077%20Leg.pdf](https://www.sunset.texas.gov/public/uploads/files/reports/Finance%20Commission_Banking_Savings%20and%20Loan_Consumer%20Credit%20Staff%20Report%202000%2077%20Leg.pdf).

# ISSUE 3

## *Three Finance-Related Regulatory Programs Are Not Necessary to Protect the Public.*

### Background

The Finance Commission and the three finance agencies oversee regulation of the majority of the state's financial industry, including commercial banks, money service businesses, mortgage lending, and small consumer lenders. In fiscal year 2017, the finance agencies' jurisdiction included 64,308 licensees and registrants in total.

The Sunset Advisory Commission has a long history of evaluating regulatory programs, guided by standards set in the Sunset Act.<sup>1</sup> In 2013, the Legislature re-emphasized the need for a rigorous assessment of state regulation by adding criteria for Sunset reviews of licensing and regulatory programs, summarized in the textbox, *Sunset Licensing and Regulatory Questions*.<sup>2</sup> Sunset reviews evaluate the need for agencies and programs; when evaluating licensing and regulatory programs, the burden is on proving the need for the regulation. The assessment of need occurs through a detailed analysis of the potential harm, whether in terms of physical harm or in more subjective terms, such as financial or economic loss. With these criteria in mind, Sunset staff reviewed the array of regulatory programs administered by the finance agencies and identified three programs that fail to meet the need for continued regulation.

#### **Sunset Licensing and Regulatory Questions**

- Does the program serve a meaningful public interest and provide the least restrictive form of regulation?
- Could the program's regulatory objectives be achieved through market forces, private certification and accreditation programs, or enforcement of other laws?
- Are the skill and training requirements consistent with a public interest, or do they impede applicants?
- What is the impact of the regulation on competition, consumer choice, and cost of services?

- **Pawnshop employee licensure.** In 1981, the Legislature added licensing of pawnshop employees to the Office of Consumer Credit Commissioner's (OCCC) regulation of pawnshops. Pawnshop employees handle the purchase or sale of pawnshop merchandise. Statute prohibits a pawnshop from employing an individual as a pawnshop employee for more than 75 days without the individual holding or applying for a pawnshop employee license.<sup>3</sup> In fiscal year 2017, OCCC licensed 7,243 pawnshop employees.
- **Cemetery broker registration.** Consumers may hire third-party cemetery brokers to help resell their previously purchased or inherited cemetery plots. In 2013, the Legislature enacted requirements to ensure cemetery brokers properly document and record such sales with cemeteries, and required the brokers to register with the Texas Department of Banking (DOB).<sup>4,5</sup> In fiscal year 2017, DOB registered 14 cemetery brokers.
- **Private child support enforcement agency registration.** State law designates the Office of the Attorney General as Texas' official child support enforcement agency.<sup>6</sup> However, custodial parents to whom child support is owed can choose to use the services of the attorney general, hire a private

attorney, or contract with a for-profit private child support enforcement agency. In 2002, Texas began requiring these private agencies to register with DOB. In fiscal year 2017, DOB registered 10 private agencies.

## Findings

### Licensing pawnshop employees duplicates requirements on pawnbrokers and creates unnecessary barriers for jobseekers.

- **Pawnbrokers fully responsible.** Pawnbrokers, the licensed owners and operators of pawnshops, are the entities responsible for all pawn transactions. Statute puts the onus on pawnbrokers to properly complete pawn tickets, check identification of customers seeking to sell or pledge property, monitor goods coming into the shop for identification of stolen goods, hold goods for law enforcement, and otherwise operate their pawnshops lawfully.<sup>7</sup> To comply with the law, pawnbrokers must adequately oversee their subordinates as in any employment relationship. Requiring pawnshop employees to also hold individual licenses adds an unnecessary and duplicative level of regulation and paperwork.
- **Barriers to entry.** Requiring prospective pawnshop employees to submit to licensure requirements and the \$37 state fingerprint background checks is regulatory overkill given the minimal risks involved, making the regulation more of a burden to jobseekers than a benefit to the public. Sunset reviews judge the imposition of burdensome licensure qualifications against the level of trust placed in the individual being licensed. Unlike health professionals, teachers, or individuals who enter people's homes such as real estate agents, pawnshop employees do not perform high-risk functions posing a significant risk to public health or safety. Pawnbrokers can assume full responsibility for vetting the trustworthiness of their potential employees through less burdensome background check options available on the private market. In fiscal year 2017, OCCC received 2,690 pawnshop employee applications, and denied only one. Further, no pawnshop employee license applicants were denied licensure based on criminal history in the past three fiscal years.
- **Large regulatory gap.** Statute permits unlicensed pawnshop employees to work and make pawn loans without restriction for 75 days before a pawnshop employee even applies for a license.<sup>8</sup> Statute then allows the applicant to continue to work at the pawnshop while OCCC reviews the application.<sup>9</sup> New pawnshop employees may remain unlicensed and on the job for months before the state becomes involved in regulating these individuals. Since pawnshop employees pose no great risk to public safety or wellbeing during this 75 day period, there is no reason a risk requiring regulation develops after 75 days.
- **No meaningful enforcement activity.** Most pawnshop employee enforcement activity involves paperwork violations, primarily whether the individuals applied for their licenses on time. In fiscal year 2017, all 64 enforcement orders issued against pawnshop employees were for failing to

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*OCCC denied only one out of 2,690 pawnshop employee applications last year.*

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*Statute permits pawnshop employees to work 75 days before even applying for a license.*

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timely apply for licensure. Similarly, almost half of OCCC's enforcement actions against pawnshops that year regarded employee paperwork issues. Finally, OCCC received only 19 complaints against pawnshop employees in fiscal year 2017, none of which required enforcement action. OCCC can investigate and act on any complaints against employees through its regulation of pawnshops and would better use its time and effort on examining pawnshops for more substantive issues.

### **State registration of cemetery brokers is not necessary to ensure proper record keeping of cemetery plot sales.**

- **No enforcement activity.** The sole function served by requiring cemetery brokers to register with DOB is to make resolving complaints easier. However, since registration began in 2014, DOB has received only one complaint and has taken no enforcement actions related to cemetery brokers. The lack of complaints and enforcement activity indicates regulation is unnecessary and deregulation would present a low risk of harm to cemeteries and the public.
- **Separate laws protect consumers.** Ensuring cemetery brokers properly resell the right to burial does not require registration of the brokers. The 2013 legislation creating broker registration also addressed the need to properly record and document ownership of resold burial rights. When reselling a cemetery plot, state law requires brokers to comply with the cemetery organization's rules for the form of the transfer deed, file and record the deed with the cemetery, pay any required fees, and maintain records of the transfer.<sup>10</sup> Statute also provides criminal penalties for cemetery brokers who fail to keep records or pay fees.<sup>11</sup> Removing the requirement that cemetery brokers register with DOB would not affect cemetery brokers' duties or lessen the protections provided by law.
- **Registration adds no value.** The registration program is merely an administrative task that adds no value or protection to the public. To register as a cemetery broker, individuals simply pay the \$100 annual registration fee and provide contact information.<sup>12</sup> The state performs no background checks, requires no educational or financial surety, and performs no examinations to ensure the brokers' familiarity with state regulations.

### **State registration of private child support enforcement agencies is not needed to protect Texans from deceptive business practices.**

- **Adequate consumer choice.** The Attorney General's Office is the official child support enforcement agency for the state, and will pursue any custodial parent's child support payment collection at a minimal cost.<sup>13</sup> Parents have the choice of using the attorney general for this service, making the decision to use a private agency entirely voluntary.

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*Since registration began, DOB has taken no enforcement actions related to cemetery brokers.*

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*To register, a cemetery broker simply pays a \$100 fee and provides contact information.*

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The attorney general's website provides consumer information on the use of private agencies, advising both on the importance of fully understanding any contract before signing, and on the need to balance the potential benefit of using a private agency with the higher costs involved.<sup>14</sup> If a client cancels a contract with a private agency, the attorney general can resume pursuit of the child support collection case.

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*In the past five years, DOB has taken zero enforcement actions against private child support enforcement agencies.*

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- **No meaningful enforcement activity.** In the past five years, DOB has taken zero enforcement actions against private child support enforcement agencies. DOB received two complaints in fiscal year 2017 related to contract disputes between a private agency and its client, but had no authority over these issues.<sup>15,16</sup>
- **Separate laws protect consumers.** Removing the requirement that private child support enforcement agencies register with DOB would not affect important requirements and consumer protections. The Attorney General's Office can take action against private child support enforcement agencies for deceptive trade practices. Similar to the state's statute overseeing third-party debt collectors, statute prohibits private child support enforcement agencies from engaging in any abusive or deceptive acts and allows complainants multiple outlets for resolving the issue beyond DOB.<sup>17</sup> All private child support enforcement agencies' contract terms must be in writing and clearly provide all fee, cancellation, and other terms. Requiring agencies to register with DOB does not substantially add to these protections.

## Recommendations

### Change in Statute

#### 3.1 Discontinue licensure of pawnshop employees.

This recommendation would remove the regulation of pawnshop employees from the Finance Code, effective September 1, 2019. Pawnbrokers would still have to supervise and train their employees to ensure they comply with all statutory standards and practices for pawnshops. Current law would continue to require pawnbrokers to comply with laws relating to recordkeeping, pawn tickets, identification, monitoring to identify stolen goods, compliance with hold periods, and any other pawnshop activity, whether performed by the pawnbroker or commonly delegated to an employee. This recommendation would decrease the administrative burden on pawnshops and barriers to entry into the profession for employees, ensuring the state implements the least amount of regulation necessary to protect the public interest. The recommendation also allows the agency to refocus enforcement efforts from paperwork to more significant violations.

#### 3.2 Discontinue registration of cemetery brokers.

This recommendation would remove the registration of cemetery brokers from statute, effective September 1, 2019. State law would still require all cemetery brokers to comply with statutory requirements regarding documentation of transfers of burial rights, including potential criminal penalties for violations. This recommendation would eliminate an unnecessary burden on individuals involved in brokering burial plots and ensure the state imposes the least amount of regulation necessary to protect the public interest.

### 3.3 Discontinue registration of private child support enforcement agencies.

This recommendation would remove the registration of private child support enforcement agencies from statute, effective September 1, 2019. The law would still require the private agencies to comply with statutory standards and practices such as providing clear contract terms and fee information. The agencies would also remain subject to laws against deceptive trade practices, and could be held accountable by the Office of Attorney General for any violations. This recommendation would remove an unnecessary regulatory burden on private businesses and ensure the state imposes the least amount of regulation necessary to protect the public interest.

## Fiscal Implication

These recommendations would not have a fiscal impact to the state. In total, deregulating these three entities would result in \$954,425 in savings to regulated industries over the next five fiscal years. The Legislature granted OCCC and DOB self-directed semi-independent status, removing them from the appropriations process. As such, the Legislature made each agency responsible for charging fees to cover the cost of regulation, so any savings or costs would be passed on to the regulated industry.

Recommendation 3.1 discontinuing pawnshop employee licensure would decrease revenue to OCCC by approximately \$179,735 per year, but would save OCCC the cost of administering the program.

Recommendation 3.2 discontinuing cemetery broker registration would decrease revenue to DOB by approximately \$1,400 per year, but would save the agency the cost of administering the program.

Recommendation 3.3 discontinuing private child support enforcement agency registration would decrease revenue to DOB by approximately \$9,750 per year, but would save the agency the cost of administering the program.

### *Finance Agencies*

<b>Fiscal Year</b>	<b>Decrease in Revenue to the Finance Agencies</b>	<b>Savings to the Finance Agencies</b>
2020	\$190,885	\$190,885
2021	\$190,885	\$190,885
2022	\$190,885	\$190,885
2023	\$190,885	\$190,885
2024	\$190,885	\$190,885

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- 1 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.0115, Texas Government Code.
  - 2 Section 325.0115(b), Texas Government Code.
  - 3 Section 371.101, Texas Finance Code.
  - 4 Section 711.0381, Texas Health and Safety Code.
  - 5 Chapter 711, Subchapter C-1, Texas Health and Safety Code.
  - 6 Section 231.001, Texas Family Code.
  - 7 Chapter 371, Subchapter D, Texas Finance Code.
  - 8 Section 371.101, Texas Finance Code.
  - 9 Ibid.
  - 10 Section 711.0381, Texas Health and Safety Code.
  - 11 Section 711.052, Texas Health and Safety Code.
  - 12 Section 711.046, Texas Health and Safety Code.
  - 13 Sections 231.011, 231.101, 231.103, Texas Family Code
  - 14 Texas Attorney General, *Child Support, Frequently Asked Questions*, accessed March 16, 2018, <https://www.texasattorneygeneral.gov/faq/cs-parents-frequently-asked-questions>.
  - 15 Sections 396.251–396.252 and 396.351–396.353, Texas Finance Code.
  - 16 Sections 392.301–392.306 and 392.402–392.404, Texas Finance Code.
  - 17 Section 396.203, Texas Finance Code.



# ISSUE 4

## *Elements of the Department of Banking's Statute and Rules Do Not Conform to Common Licensing Standards.*

### Background

The mission of the Texas Department of Banking (DOB) is to ensure Texas has a safe, sound, and competitive financial services system for the citizens of Texas. To accomplish this mission, the agency regulates banks, trusts, and other financial entities that provide financial services to Texans, such as money services businesses and death care service providers. In fiscal year 2017, the agency regulated 297 banks and trust companies, 156 money services businesses, and about 600 death care providers.

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the agency's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

### Findings

#### **Inflexible renewal periods unnecessarily limit the agency's efficiency in regulating the death care industry.**

A regulatory agency should have flexibility in its renewal process to efficiently regulate activities subject to its jurisdiction. Prepaid funeral contract providers and perpetual care cemeteries are the only two entities regulated by DOB statutorily required to renew their licenses annually.<sup>1,2</sup> Statute goes so far as to specify a specific renewal date, March 1, for perpetual care cemeteries.<sup>3</sup> As part of the renewal process, both death care groups must pay a fee and submit an annual report that outlines whether the entity continues to meet the qualifications required for license renewal.<sup>4,5</sup> Requiring annual renewals in statute is unnecessarily restrictive and limits the agency's ability to manage its workload and streamline regulation. Authorizing the agency to set death care license renewal periods in rule would allow the agency to develop more efficient internal processes in line with its other license types and ease the regulatory burden on regulated entities. DOB may continue to suspend or revoke a license at any time for failing to meet licensure qualifications to ensure lengthening the license period would not diminish public protections.

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*Death care providers are the only DOB licensees required to renew annually.*

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### **The agency's statute and rules lack updated requirements and guidelines governing all phases of the complaint process.**

- **Outdated across-the-board Sunset complaint statute.** Over the years, Sunset reviews have included a number of standard review elements from direction provided by the Sunset Commission. These across-the-board recommendations reflect an effort by the Legislature to adopt “good government” standards designed to ensure open, responsive, and effective government. DOB's statute contains outdated complaint language the Sunset Commission has since revised to provide more streamlined, clear direction to agencies.<sup>6</sup> Updating statute to the current Sunset language would ensure DOB's system for acting on complaints and keeping proper documentation of complaints is clear to consumers and the regulated industry while also providing flexibility to the agency to adopt details in rule and adjust procedures and documentation as needed.
- **Complaint rules not sufficiently detailed.** An agency's procedures for dealing with complaints should be guided by comprehensive rules covering all phases of the process, including receipt, investigation, adjudication, dismissal or closure, and disclosure to the complaint parties. Detailed rules documenting all phases of complaint investigations help policymaking bodies set expectations and check results for appropriate and fair actions with both the public and licensees. Consistent complaint rules and reporting procedures also improve oversight by allowing comparisons to identify concerning trends or best practices among similar regulatory programs.

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*DOB's statute and rules on complaints are out of date and unclear.*

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While DOB has internal policies regarding some of the complaint process, the agency does not include its complaint procedures in rule.<sup>7</sup> Directing DOB and the Finance Commission to develop and standardize comprehensive complaint rules among the three finance agencies would ensure consumers and licensees know what to expect, that the process is fair, and that the Finance Commission has consistent information for effective oversight.

### **The agency's statute contains outdated appeal avenue provisions.**

An agency's appeals process should comply with the standards in the Administrative Procedure Act, which provide for due process and clear expectations for both the agency and the industry it regulates. DOB's statute contains inconsistent provisions allowing parties to appeal agency decisions to the Finance Commission.<sup>8</sup> The Finance Commission oversees the finance agencies' budgets and rules, but does not investigate complaints or take action; statute clearly leaves all enforcement authority to each agency commissioner. Under the Administrative Procedure Act, the appropriate avenue for appeals is an administrative hearing and district court. Correcting these outdated statutory provisions would ensure consumers and regulated entities have appropriate due process consistent across the entities regulated by the finance agencies.

## Recommendations

### *Change in Statute*

#### **4.1 Authorize the agency to establish license terms in rule for death care service licensees.**

This recommendation would remove statutory requirements for annual renewal of licensed prepaid funeral contract and perpetual care cemetery providers. To streamline administrative workload and align with renewal procedures for other DOB license types, the agency would establish license terms in rule appropriate for regulatory oversight. The recommendation would also clarify DOB's authority to suspend or revoke a license at any time for a licensee's failure to meet licensure qualifications, and to require licensees to submit reports as needed for ongoing monitoring. More flexible renewal requirements would allow DOB to reduce time spent on processing renewals and alleviate burden on licensees without compromising agency oversight of the industry. The agency should adopt updated rules by December 1, 2019.

#### **4.2 Update the agency's complaint processing provisions to meet the Sunset Commission's standard across-the-board requirements.**

This recommendation would modify DOB's statute to reflect updated Sunset Commission complaint best practices for agencies. Statute would require the agency to develop a system to promptly and efficiently act on complaints, maintain documentation on all complaints received by the agency, and inform all parties to a complaint about agency complaint investigation procedures and the status of the complaint until resolution. This recommendation would remove outdated complaint requirements from statute to ensure DOB has the flexibility necessary to adopt updated rules and procedures to timely and transparently resolve complaints.

#### **4.3 Update outdated appeals provisions to align with the Administrative Procedure Act.**

This recommendation would amend statute to remove the Finance Commission as an avenue for appeal, aligning DOB's statute with the other finance agencies and common practice to ensure respondents have the same, standard appeals process through administrative hearings and district court.

### *Management Action*

#### **4.4 Direct DOB and the Finance Commission to develop an updated complaint process in rule.**

This recommendation would require DOB and the Finance Commission to develop updated rules detailing all phases of the agency's complaint investigation and resolution process to promote consistent and transparent processing of consumer complaints. Recommendations in Issue 5 and Issue 6 would direct similar actions for the Office of Consumer Credit Commissioner and Department of Savings and Mortgage Lending. The rulemaking process coordinated through the Finance Commission would shed light on discrepancies between the three agencies' processes, ensure the agencies report consistent information for effective oversight, and help the Finance Commission identify best practices. The Finance Commission should coordinate this effort and adopt updated complaint rules for DOB by September 1, 2019.

The rules should include, at a minimum, the following best practices:

- Details on all phases of the agency’s complaint investigation and resolution process, including receipt, investigation, adjudication, closure, and disclosure to the complaint parties.
- Overall timeline goals for complaint investigation and resolution.
- Regular intervals for informing complaint parties of the status of investigations.
- A process for providing a summary of the complaint’s resolution to the complaint parties once the agency has closed the complaint.
- Information about options for appealing the agency’s resolution of the complaint.
- Procedures governing administrative dismissal of complaints by agency staff and establishing a quality control process to ensure the agency checks a sample of complaints closed without an investigation, found to be nonjurisdictional, or found to be lacking sufficient evidence to refer to enforcement.
- Procedures for consistently defining, counting, and reporting all types of complaints and their resolution to the Finance Commission. The rules should clearly define how the agency differentiates between complaints and inquiries, and should specifically require tracking and reporting of administratively dismissed complaints, complaints closed for lack of sufficient evidence, and nonjurisdictional complaints.

## Fiscal Implication

These recommendations would not have a fiscal impact to the state since DOB is a self-directed semi-independent agency exempt from the legislative appropriations process. These recommendations would also have no significant fiscal impact to the agency.

Recommendation 4.1 would authorize the agency to modify its renewal timelines for licensed death care providers. The agency could modify its fee schedule accordingly to continue to cover the cost of regulation with collected fees, currently about \$400,000 annually.

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 1 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 154.104, Texas Finance Code.

2 Section 712.0036, Texas Health and Safety Code.

3 Ibid.

4 Section 154.052, Texas Finance Code.

5 Section 712.0037(a)(2), Texas Health and Safety Code.

6 Section 12.108(b) and (c), Texas Finance Code.

7 7 T.A.C. Section 11.37.

8 Sections 11.202, 31.202-31.204, 35.110(d), 181.202-181.204, 185.110(d), and 204.119, Texas Finance Code.

# ISSUE 5

## *Key Elements of the Office of Consumer Credit Commissioner's Statute and Rules Do Not Conform to Common Regulatory Standards.*

### Background

The Office of Consumer Credit Commissioner (OCCC)'s mission is to protect the public by regulating financial credit services, other than those provided by banks. To accomplish this mission, the agency licenses and examines lending entities that provide consumer credit. In fiscal year 2017, the agency licensed more than 16,000 businesses and 7,000 individuals.

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the agency's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

### Findings

#### **Statutory licensing provisions contain outdated language and reduce the efficiency of agency operations.**

- **Subjective qualifications for licensure.** Qualifications for licensure should be clear and not unreasonably restrict entry into practice. Currently, statute requires applicants for pawnshop and pawnshop employee licensure to be of "good moral character."<sup>1,2</sup> While of course Texas wants licensees to have good character, the phrase "good moral character" is a subjective, vague requirement that may be determined inconsistently. Removing the statutory requirement that applicants be of good moral character would be in line with the agency's current practice of reviewing an applicant's criminal history and determining whether to deny a license on the basis of standards relevant to the license being sought.
- **Burdensome license renewals.** A regulatory agency should have the flexibility in its renewal process to most efficiently regulate activities subject to its jurisdiction. Statute requires all of OCCC's licensees and registrants to renew annually. Requiring annual renewals in statute is unnecessarily restrictive and limits the agency's ability to manage its workload and streamline regulation. Authorizing the agency to renew licenses and registrations every two years rather than annually would help the agency develop more efficient internal processes and ease the regulatory burden on regulated entities.

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*Statute requires all of OCCC's licenses and registrations to renew annually.*

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### The agency lacks updated requirements and guidelines governing all phases of the complaint process.

- **Outdated across-the-board Sunset complaint statute.** Over the years, Sunset reviews have included a number of standard review elements from direction provided by the Sunset Commission. These across-the-board recommendations reflect an effort by the Legislature to adopt “good government” standards designed to ensure open, responsive, and effective government. OCCC’s statute contains outdated complaint language the Sunset Commission has since revised to provide more streamlined, clear direction to agencies.<sup>3</sup> Updating statute to the new Sunset language would ensure OCCC’s system for acting on complaints and keeping proper documentation of complaints is clear to consumers and the regulated industry while also providing flexibility to the agency to adopt details in rule and adjust procedures and documentation as needed.
- **Complaint rules not sufficiently detailed.** An agency’s procedures for dealing with complaints should be guided by comprehensive rules covering all phases of the process, including receipt, investigation, adjudication, dismissal or closure, and disclosure to the complaint parties. Detailed rules documenting all phases of complaint investigations help policymaking bodies set expectations and check results for appropriate and fair actions with both the public and licensees. Consistent complaint rules and reporting procedures also improve oversight by allowing comparisons to identify concerning trends or best practices among similar regulatory programs.

While OCCC has internal policies regarding some of the complaint process, the agency’s complaint rules lack standard elements and are not consistent with the other two agencies under the Finance Commission’s oversight.<sup>4</sup> Directing OCCC and the Finance Commission to update and standardize comprehensive complaint rules among the three finance agencies would ensure consumers and licensees know what to expect, that the process is fair, and that the Finance Commission has consistent information for effective oversight.

- **Statutory obstacle to transparency.** Regulatory agencies should provide complainants information about the status of their complaints. Statute generally prohibits OCCC from disclosing information obtained in an investigation, preventing the agency from providing basic information about the resolution of the issue to the complainant.<sup>5</sup> To facilitate transparency, statute should specifically authorize OCCC to give a summary of the case’s resolution to the complainant for any of its regulated entities.

### Nonstandard statutory enforcement provisions present obstacles to effective regulation.

- **Delayed investigations.** Agencies should respond to complaints and investigate suspected violations in a timely manner. Currently, statute requires OCCC to wait for a response from the entity potentially in violation

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*Detailed complaint rules set expectations for fairness.*

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*OCCC cannot currently provide complainants information about case resolution.*

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before opening an investigation.<sup>6</sup> OCCC should be able to promptly open an investigation upon reasonable suspicion a violation may have occurred in any of its regulatory programs, so it can quickly seek resolutions for consumers or close investigations for a lack of merit.

- **Unnecessary barriers to enforcement.** The enforcement process should not make it overly difficult to bring disciplinary action and should allow an agency to move quickly to deal with unlicensed activity. Currently, statute contains outdated language requiring OCCC to prove a person “knowingly and wilfully” committed a violation before the agency may impose administrative penalties, a high burden of proof.<sup>7</sup> Recently, the State Office of Administrative Hearings acknowledged OCCC’s difficulty to meet this high bar when bringing action for failure to file a required report, but determined the plain statutory language required OCCC to prove the licensee’s state of mind.<sup>8</sup> Removing this barrier would align OCCC’s statute with other regulatory agencies such as the Texas Board of Professional Engineers and Texas Department of Insurance.<sup>9,10</sup> These agencies must still prove that licensees violated agency regulations, but do not have to prove the licensee’s state of mind during the violation. Removing the knowing and willful standard from OCCC’s statute for all its regulatory programs would allow the agency to more effectively enforce the Finance Code.

OCCC lacks another standard enforcement provision for one of its newer regulatory programs recently transferred from the Department of Public Safety, crafted precious metal dealers. OCCC does not have authority to issue cease and desist orders to take action against these registrants, giving individuals little incentive to comply with state law. Statute grants OCCC cease and desist authority for all other license and registration types under its jurisdiction, which is a common enforcement tool for most regulatory agencies.

- **No authority to deny renewal for noncompliant licensees.** The authority to deny license renewals if applicants fail to comply with regulatory actions bolsters agencies’ efforts and ensures licensees with compliance problems fulfill their responsibilities. OCCC issued almost 400 disciplinary orders in fiscal year 2017, but the agency lacks clear authority to deny license or registration renewals based on an applicant’s lack of compliance with those orders. Authorizing OCCC to deny renewal for any noncompliant licensee or registrant would provide a common tool to incentivize timely compliance with state law and better protect consumers.
- **Limited, inconsistent restitution authority.** A regulatory agency should have authority to order restitution in situations where a member of the public has been defrauded or subjected to a loss that can be quantified. Statute limits OCCC’s authority to order restitution to persons “injured” by the violation.<sup>11</sup> Under this high standard, OCCC has difficulty ordering entities found to be systematically violating regulatory standards, such as selling unauthorized financial products, to order refunds to all consumers

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*Statute sets an unreasonably high bar for OCCC to bring disciplinary action.*

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*Statute limits OCCC’s ability to order consumer refunds.*

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impacted by the violation. Other agencies such as the Department of Banking and the Board of Architectural Examiners do not have to meet a statutory injury standard to order consumer restitution.<sup>12,13</sup> Under similar authority, OCCC would still have to prove a violation of state regulations and demonstrate a cost to consumers, but would be able to more effectively enforce the Finance Code and mitigate impacts to consumers' finances.

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*OCCC cannot order consumer refunds at all for crafted precious metal dealers.*

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In its new crafted precious metal dealer program, OCCC does not have authority to order restitution at all, limiting regulatory effectiveness and the agency's ability to protect consumers.<sup>14</sup> Statute grants OCCC authority to order restitution for all other licensees and registrants, placing crafted precious metal dealers out of step with other registrants under the agency's jurisdiction.

- **Outdated appeals process.** An agency's appeals process should comply with standards in the Administrative Procedure Act, which provide for due process and clear expectations for both the agency and the industry it regulates. Under these statewide standards, regulatory agencies commonly provide respondents with notice of an enforcement action and the opportunity to request a hearing if they choose to appeal. However, OCCC's statute contains an outdated and inefficient provision requiring OCCC to hold often-unattended hearings for every action, regardless of whether the respondent requests one.<sup>15</sup> Requiring OCCC to instead provide an opportunity for a hearing would maintain licensees' right to due process while aligning the agency statute with standard practice.

OCCC's statute also contains inconsistent provisions allowing parties to appeal agency decisions to the Finance Commission.<sup>16</sup> The Finance Commission oversees the finance agencies' budgets and rules, but does not investigate complaints or take action; statute clearly leaves all enforcement authority to each agency commissioner. Under the Administrative Procedure Act, the appropriate avenue for appeals is an administrative hearing and district court. Correcting these outdated statutory provisions would ensure consumers and regulated entities have appropriate due process that is consistent across the entities regulated by OCCC and the other finance agencies.

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*OCCC does not provide full enforcement information online.*

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- **Incomplete online enforcement information.** Licensing agencies should make enforcement orders readily available to the public to help guide informed consumer choice. OCCC provides a list of disciplinary actions taken against entities on its website but does not provide the actual enforcement orders, which are public records. Providing full enforcement orders would improve the transparency of the agency's disciplinary decisions and its efforts to carry out its primary mission of helping consumers make informed choices.



## Recommendations

### *Change in Statute*

#### **5.1 Remove subjective licensure provisions for pawnshops and pawnshop employees.**

This recommendation would remove the outdated requirement for pawnshop and pawnshop employee license applicants to be of “good moral character,” a standard that is unclear, subjective, and difficult to enforce. The agency would continue to receive and review criminal history information to determine the applicant’s eligibility for licensure according to requirements in Chapter 53 of the Texas Occupations Code and the Texas Finance Code. This recommendation would not be applicable to pawnshop employees if the Sunset Commission adopts Recommendation 3.1 to discontinue licensure of pawnshop employees.

#### **5.2 Authorize the agency to provide biennial license renewals for its licensees and registrants.**

This recommendation would allow OCCC to establish a system providing for biennial license and registration renewal for all regulated entities. The agency would determine the frequency of renewal appropriate for regulatory oversight. This recommendation would provide flexibility for OCCC to reduce time spent processing renewals and alleviate burden on licensees and registrants, without compromising agency oversight of the industry.

#### **5.3 Update the agency’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.**

This recommendation would modify OCCC’s statute to reflect updated Sunset Commission complaint best practices for agencies. Statute would require the agency to develop a system to promptly and efficiently act on complaints, maintain documentation on all complaints received by the agency, and inform all parties to a complaint about agency complaint investigation procedures and the status of the complaint until resolution. This recommendation would remove outdated complaint requirements from statute to ensure OCCC has the flexibility necessary to adopt updated rules and procedures to timely and transparently resolve complaints.

#### **5.4 Authorize OCCC to disclose summary complaint resolution information to a complainant.**

This recommendation would authorize OCCC to give complainants high-level information about the outcome of their complaint investigation, increasing the transparency of the complaint process for all regulatory programs.

#### **5.5 Authorize OCCC to open an investigation immediately upon reasonable suspicion of a violation.**

This recommendation would remove the requirement that OCCC wait for a response from the entity under investigation before formally opening the investigation, removing an obstacle to timely resolution for complainants and respondents in all regulatory programs.

#### **5.6 Remove an outdated, overly restrictive burden of proof for proving regulatory violations.**

This recommendation would remove the outdated provision requiring OCCC to prove an entity’s “knowing and wilful” state of mind before taking regulatory action. OCCC would still have to clearly

prove an entity violated state regulations. This recommendation would align the agency's statute with standard practice and remove unnecessary barriers limiting the agency's ability to take enforcement action in all regulatory programs.

#### **5.7 Give OCCC standard authority to take action against crafted precious metal dealers violating state regulations.**

This recommendation would authorize OCCC to issue cease and desist orders against crafted precious metal dealers out of compliance with state regulations. This recommendation would align OCCC's authority over this industry with its authority to take action against all other unlicensed or unlawful activity related to industries under its jurisdiction.

#### **5.8 Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.**

This recommendation would authorize OCCC to deny license or registration renewal for entities who fail to comply with agency enforcement orders in all regulatory programs. Statute would continue to allow applicants to appeal the agency's license renewal decisions. This recommendation would give the agency a standard tool to better enforce compliance with the Finance Code.

#### **5.9 Standardize OCCC's burden of proof for ordering restitution in all regulatory programs.**

This recommendation would remove the unnecessarily high standard that OCCC prove injury to a consumer before the agency orders restitution in any of its regulatory programs. OCCC would still have to prove that an entity violated state regulations with a quantifiable cost to consumers. This recommendation would maintain due process for licensees, but would help OCCC make consumers whole when adversely affected by violations similar to other regulatory agencies.

#### **5.10 Authorize OCCC to order crafted precious metal dealers to pay consumer restitution.**

This recommendation would authorize OCCC to order crafted precious metal dealers to pay restitution to consumers financially impacted by a regulatory violation. This recommendation would align OCCC's enforcement authority over crafted precious metal dealers with its authority over all other licensees and registrants under the agency's jurisdiction.

#### **5.11 Update outdated appeals provisions to align with the Administrative Procedure Act.**

This recommendation would align OCCC's statute with provisions in the Administrative Procedure Act ensuring due process for licensees without wasting agency resources. This recommendation would amend statute to clarify that OCCC must provide notice and opportunity for a hearing, but is not required to hold hearings if respondents have not requested a hearing within the statutory timeline. This recommendation would avoid the potential waste of time and resources caused by holding unattended default hearings.

This recommendation would also amend statute to remove the Finance Commission as an avenue for appeal, aligning OCCC's statute with the other finance agencies and common practice to ensure respondents have the same, standard appeals process through administrative hearings and district court.

## **Management Action**

### **5.12 Direct OCCC and the Finance Commission to develop an updated complaint process in rule.**

This recommendation would require OCCC and the Finance Commission to develop updated rules detailing all phases of the agency's complaint investigation and resolution process to promote consistent and transparent processing of consumer complaints. Recommendations in Issue 4 and Issue 6 would direct similar actions for the Department of Banking and Department of Savings and Mortgage Lending. The rulemaking process coordinated through the Finance Commission would shed light on discrepancies between the three agencies' processes, ensure the agencies report consistent information for effective oversight, and help the Finance Commission identify best practices. The Finance Commission should coordinate this effort and adopt updated complaint rules for OCCC by September 1, 2019.

The rules should include, at a minimum, the following best practices:

- Details on all phases of the agency's complaint investigation and resolution process, including receipt, investigation, adjudication, closure, and disclosure to the complaint parties.
- Overall timeline goals for complaint investigation and resolution.
- Regular intervals for informing complaint parties of the status of investigations.
- A process for providing a summary of the complaint's resolution to the complaint parties once the agency has closed the complaint.
- Information about options for appealing the agency's resolution of the complaint.
- Procedures governing administrative dismissal of complaints by agency staff and establishing a quality control process to ensure the agency checks a sample of complaints closed without an investigation, found to be nonjurisdictional, or found to be lacking sufficient evidence to refer to enforcement.
- Procedures for consistently defining, counting, and reporting all types of complaints and their resolution to the Finance Commission. The rules should clearly define how the agency differentiates between complaints and inquiries, and should specifically require tracking and reporting of administratively dismissed complaints, complaints closed for lack of sufficient evidence, and nonjurisdictional complaints.

### **5.13 Direct the agency to make enforcement orders available online.**

This recommendation would direct OCCC to provide links from its website to the full text of public enforcement orders, increasing transparency and supporting the agency's mission of helping consumers make informed choices.

## **Fiscal Implication**

The recommendations would not have a fiscal impact on the state because OCCC is a self-directed semi-independent agency exempt from the legislative appropriation process.

The recommendations would also have no cost to the agency. Updating statute to give the agency more flexibility and enforcement tools would have no significant fiscal impact on current operations. Aligning

the agency's statute with the Administrative Procedure Act may result in savings to the agency due to eliminating unnecessary hearings. Updating the agency's complaint processes and documenting phases of complaint investigation and resolution in rule can be accomplished within existing resources.

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- <sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 371.052, Texas Finance Code.
  - <sup>2</sup> Section 371.102, Texas Finance Code.
  - <sup>3</sup> Section, 14.062, Texas Finance Code.
  - <sup>4</sup> 7 T.A.C. Section 82.4.
  - <sup>5</sup> Section 14.2015, Texas Finance Code.
  - <sup>6</sup> Section 14.202, Texas Finance Code.
  - <sup>7</sup> Sections 14.251, 352.007, and 393.224, Texas Finance Code.
  - <sup>8</sup> State Office of Admin. Hearings, *Office of Consumer Credit Commissioner v. Max Money Enterprises*, Docket No. 466-16-1450 (Mar. 9, 2016) (proposal for decision).
  - <sup>9</sup> Section 1001.501, Texas Occupations Code.
  - <sup>10</sup> Section 84.021 Texas Insurance Code.
  - <sup>11</sup> Section 14.251, Texas Finance Code.
  - <sup>12</sup> Section 35.002, Texas Finance Code.
  - <sup>13</sup> Section 1051.505, Texas Occupations Code.
  - <sup>14</sup> Chapter 1956, Texas Occupations Code.
  - <sup>15</sup> Sections 342.156, 348.508, 351.156, 353.508, and 393.614, Texas Finance Code.
  - <sup>16</sup> Sections 14.208 and 354.005(d), Texas Finance Code.

# ISSUE 6

## *Elements of the Department of Savings and Mortgage Lending's Statute and Procedures Do Not Conform to Common Regulatory Standards.*

### Background

The Department of Savings and Mortgage Lending (SML)'s mission is to regulate the residential mortgage lending and state savings bank industries in Texas. To accomplish this mission, the agency issues licenses, conducts examinations, and enforces the Texas Finance Code, taking disciplinary action when necessary. In fiscal year 2017, the agency regulated 26 state savings banks, commonly called thrifts, and about 28,300 individuals and entities involved in mortgage lending, such as mortgage loan originators and mortgage companies.

The Sunset Advisory Commission has a long history of evaluating licensing and regulatory agencies, as the increase of occupational regulation served as an impetus behind the creation of the commission in 1977. Since then, the Sunset Commission has completed numerous reviews of licensing and regulatory agencies, documenting standards to guide future reviews. While these standards provide guidance for evaluating a regulatory agency's structure and functions, they are not intended for blanket application. Sunset staff continues to refine and develop standards to reflect additional experience and changing needs, circumstances, or practices. The following material highlights areas where the agency's statute and rules differ from these model standards and describes potential benefits of conforming to standard practices.

### Findings

#### **Statutory licensure qualifications for residential mortgage loan originators include outdated and subjective language.**

Qualifications for licensure should be clear and not unreasonably restrict entry into practice. Currently, statute requires applicants for a residential mortgage loan originator license to be of "good moral character."<sup>1</sup> While of course Texas wants licensees to have good character, the phrase "good moral character" is a subjective, vague requirement that may be determined inconsistently. Removing the statutory requirement that applicants be of good moral character would be in line with the agency's current practice of reviewing an applicant's criminal history and denying licenses based on standards related to the practice of mortgage loan origination.

#### **The agency's statute and rules lack updated requirements and guidelines governing all phases of the complaint process.**

- **Outdated across-the-board Sunset complaint statute.** Over the years, Sunset reviews have included a number of standard review elements from direction provided by the Sunset Commission. These across-the-board recommendations reflect an effort by the Legislature to adopt "good

government” standards designed to ensure open, responsive, and effective government. SML’s statute contains outdated complaint language the Sunset Commission has since revised to provide more streamlined, clear direction to agencies.<sup>2</sup> Updating statute to the new Sunset language would ensure SML’s system for acting on complaints and keeping proper documentation of complaints is clear to consumers and the regulated industry while also providing flexibility to the agency to adopt details in rule and adjust procedures and documentation as needed.

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*The three finance agencies have inconsistent complaint rules.*

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- **Complaint rules not sufficiently detailed.** An agency’s procedures for dealing with complaints should be guided by comprehensive rules covering all phases of the process, including receipt, investigation, adjudication, dismissal or closure, and disclosure to the complaint parties. Detailed rules documenting all phases of complaint investigations help policymaking bodies set expectations and check results for appropriate and fair actions with both the public and licensees. Consistent complaint rules and reporting procedures also improve oversight by allowing comparisons to identify concerning trends or best practices among similar regulatory programs.

While SML has rules and internal policies describing some of the complaint process, the agency’s complaint rules lack standard elements and are not consistent with the other two agencies under the Finance Commission of Texas’ oversight.<sup>3</sup> Directing SML and the Finance Commission to update and standardize comprehensive complaint rules among the three finance agencies would ensure consumers and licensees know what to expect, that the process is fair, and that the Finance Commission has consistent information for effective oversight.

### **The agency’s penalty matrix does not ensure consistent application of disciplinary actions and administrative penalties.**

A regulatory agency should use detailed penalty matrices to ensure consistent disciplinary actions that are appropriately matched to the severity of the violation. SML recently developed a basic penalty matrix in response to a 2017 State Auditor’s Office report.<sup>4</sup> However, the penalty matrix does not provide clear instruction on how to apply administrative penalties for its mortgage industry licensees. For example, although the agency’s penalty matrix lists specific factors as items to consider when applying administrative penalties, such as violation severity or compliance history, the matrix does not provide how much weight to give each of these aggravating or mitigating factors.

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*SML’s instructions for applying mortgage industry penalties are unclear.*

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In comparison, the Texas Department of Banking’s penalty matrix assigns a point value to each aggravating factor and the degree to which the entity met the definition of the factor. The higher point values then correlate with higher dollar penalties. The Department of Banking considers the licensee’s lack of good faith attempts to comply with regulations an aggravating factor. The agency will more harshly penalize licensees who intentionally violated the regulation and did not attempt to correct the violation by a factor of eight points, which can increase the assessed administrative penalty from \$1,000 to

\$2,500. These detailed instructions to agency staff ensure consistent application of penalties and appropriate documentation for assessed penalty amounts. Without detailed penalty matrix instructions and clear weights for factors that may affect penalty amounts, SML cannot ensure consistent enforcement, nor prevent lenient enforcement.

## Recommendations

### *Change in Statute*

#### **6.1 Remove unnecessary, subjective licensure provisions for residential mortgage loan originators.**

This recommendation would remove the outdated requirement for residential mortgage loan originator licensee applicants to be of “good moral character,” a standard that is unclear, subjective, and difficult to enforce. The agency would continue to receive and review criminal history information to determine the applicant’s eligibility for licensure according to requirements in Chapter 53 of the Texas Occupations Code and Section 157.0132 of the Texas Finance Code.

#### **6.2 Update the agency’s complaint processing provisions to meet the Sunset Commission’s standard across-the-board requirements.**

This recommendation would modify SML’s statute to reflect updated Sunset Commission complaint best practices for agencies. Statute would require the agency to develop a system to promptly and efficiently act on complaints, maintain documentation on all complaints received by the agency, and inform all parties to a complaint about agency complaint investigation procedures and the status of the complaint until resolution. This recommendation would remove outdated complaint requirements from statute to ensure SML has the flexibility necessary to adopt updated rules and procedures to timely and transparently resolve complaints. This recommendation would not be applicable if the Sunset Commission adopts Recommendation 1.1 to abolish SML and consolidate its functions with the Department of Banking.

### *Management Action*

#### **6.3 Direct SML and the Finance Commission to develop an updated complaint process in rule.**

This recommendation would require SML and the Finance Commission to develop updated rules detailing all phases of the agency’s complaint investigation and resolution process to promote consistent and transparent processing of consumer complaints. Recommendations in Issue 4 and Issue 5 would direct similar actions for the Department of Banking and Office of Consumer Credit Commissioner. The rulemaking process coordinated through the Finance Commission would shed light on discrepancies between the three agencies’ processes, ensure the agencies report consistent information for effective oversight, and help the Finance Commission identify best practices. The Finance Commission should coordinate this effort and adopt updated complaint rules for SML by September 1, 2019.

The rules should include, at a minimum, the following best practices:

- Details on all phases of the agency’s complaint investigation and resolution process, including receipt, investigation, adjudication, closure, and disclosure to the complaint parties.
- Overall timeline goals for complaint investigation and resolution.

- Regular intervals for informing complaint parties of the status of investigations.
- A process for providing a summary of the complaint’s resolution to the complaint parties once the agency has closed the complaint.
- Information about options for appealing the agency’s resolution of the complaint.
- Procedures governing administrative dismissal of complaints by agency staff and establishing a quality control process to ensure the agency checks a sample of complaints closed without an investigation, found to be nonjurisdictional, or found to be lacking sufficient evidence to refer to enforcement.
- Procedures for consistently defining, counting, and reporting all types of complaints and their resolution to the Finance Commission. The rules should clearly define how the agency differentiates between complaints and inquiries, and should specifically require tracking and reporting of administratively dismissed complaints, complaints closed for lack of sufficient evidence, and nonjurisdictional complaints.

#### **6.4 Direct the agency to modify its penalty matrix to ensure consistent application of administrative penalties.**

This recommendation would direct the agency improve its current penalty matrix by May 1, 2019 by incorporating specific weights for mitigating or aggravating factors that may impact the assessed administrative penalty. This recommendation would require the agency to clearly define the aggravating and mitigating factors listed in its penalty matrix, direct staff on when to apply each factor, articulate situations in which each factor may merit more or less weight, and detail the degree to which each factor would increase or decrease the administrative penalty. Improving the criteria and instructions surrounding the application of the agency’s penalty matrix would better ensure the agency applies consistent penalties for its mortgage industry licensees.

### **Fiscal Implication**

These recommendations would not have a fiscal impact to the state because SML is a self-directed semi-independent agency and exempt from the legislative appropriation process.

These recommendations would also have no cost to the agency. Updating the agency’s complaint process and documenting phases of complaint investigation and resolution could be accomplished within existing resources. Amending the agency’s penalty matrix to provide more guidance and detail to agency staff may increase or decrease assessed penalty amounts, but could also be accomplished within existing resources and would not significantly impact the agency’s budget.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 157.012(c)(1), Texas Finance Code.

<sup>2</sup> Section 13.011(c) and (e), Texas Finance Code.

<sup>3</sup> 7 T.A.C. Sections 76.122 and 64.10.

<sup>4</sup> State Auditor’s Office, *An Audit Report on the Department of Savings and Mortgage Lending: A Self-directed, Semi-independent Agency*, accessed March 5, 2018, <http://www.sao.texas.gov/reports/main/17-034.pdf>.



# ISSUE 7

## *The Finance Agencies' Statutes Do Not Reflect Standard Elements of Sunset Reviews.*

### Background

Over the years, Sunset reviews have included a number of standard review elements from direction provided by the Sunset Commission, from statutory requirements added by the Legislature to the criteria for review in the Sunset Act, or from general law provisions imposed on state agencies. This review identified changes needed to conform the Finance Commission's and three finance agencies' statutes to standard Sunset language generally applied to all state agencies and to address the need for advisory committees and required reports. Sunset staff also performed a newly required assessment of cybersecurity practices.

- **Sunset across-the-board provisions.** The Sunset Commission has developed standard language that it applies across the board to all state agencies reviewed unless a strong reason exists not to do so. These provisions reflect an effort by the Legislature to place policy directives on agencies to prevent problems from occurring, instead of reacting to problems after the fact. These provisions also reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.
- **Advisory committees.** The Sunset Act states that advisory committees are abolished on the date set for abolition of an agency unless the committees are expressly continued by law. The act also directs the Sunset Commission and staff to make recommendations on the future of agency advisory committees using the same criteria to evaluate both committees and their host agencies.<sup>1</sup>
- **Reporting requirements.** The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.<sup>2</sup> The Sunset Commission has interpreted these provisions as applying to reports required by law that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports.
- **Cybersecurity.** The 85th Legislature tasked the Sunset Commission with assessing cybersecurity practices for agencies under review.<sup>3</sup> The assessment of the finance agencies' cybersecurity practices focused on identifying whether the agencies complied with state requirements and industry cybersecurity best practices. Sunset staff did not perform technical assessments or testing due to lack of technical expertise, but worked closely with the Department of Information Resources to gather a thorough understanding of the agencies' technical infrastructure.

## Findings

### **The finance agencies' statutes do not reflect updated requirements for commission member training or alternative rulemaking and dispute resolution.**

The Finance Commission's statute contains standard language requiring members to receive training and information necessary for them to properly discharge their duties.<sup>4</sup> However, statute does not contain a newer requirement that the agencies create a training manual for all Finance Commission members or specify that the training must include a discussion of the scope of and limitations on the Finance Commission's rulemaking authority.

The finance agencies' statutes also do not include a standard provision relating to alternative rulemaking and dispute resolution. This provision helps improve rulemaking and resolution of other disputes, such as interagency conflicts, through more open, inclusive, and conciliatory processes designed to solve problems by building consensus rather than through contested proceedings.

### **The agencies' statutory advisory committees have expired.**

The finance agencies have two statutory advisory committees, the Mortgage Industry Advisory Committee at the Department of Savings and Mortgage Lending (SML) and the insurance-funded prepaid funeral benefits advisory committee at the Texas Department of Banking (DOB).<sup>5, 6</sup> The Texas Government Code establishes the duration of statutory advisory committees at four years from the anniversary of the advisory committee's creation.<sup>7</sup> The Legislature has not enacted a statutory provision for either advisory committee since 2013, meaning both advisory committees were effectively abolished in 2017 pursuant to law. Currently, statute does not authorize either agency to establish advisory committees in rule, limiting their flexibility to establish these or other committees in the future.

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*The agencies lack standard authority to create advisory committees.*

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The Office of Consumer Credit Commissioner (OCCC) does not currently have any statutory advisory committees, but regularly gathers stakeholder input as needed. Given the diverse group of stakeholders impacted by OCCC's regulatory scope, the agency's work would benefit from statutory authority to formally establish advisory committees in rule as needed.

### **The finance agencies' existing reporting requirements continue to be useful.**

The table on the following page, *Finance Agencies' Reporting Requirements*, lists the agency's statutory reporting requirements, all of which Sunset staff found are useful and should be continued.

## The finance agencies should continue to implement state cybersecurity requirements and industry best practices.

Sunset staff found no issues relating to the agencies' cybersecurity practices that require action by the Sunset Commission or the Legislature, and communicated the results of this assessment directly to the agencies.

### *Finance Agencies' Reporting Requirements*

Report	Agency	Legal Authority	Description	Recipient	Sunset Evaluation
1. Self-Directed Semi-Independent Agency Biennial Report	DOB, OCCC, SML	Section 16.005(b), Texas Finance Code	Describes agency activities in the previous biennium, including the agency's financial condition, changes in fees and rules, and internal audit report.	Governor, Legislature	Continue
2. Self-Directed Semi-Independent Agency Annual Report	DOB, OCCC, SML	Section 16.005(c), Texas Finance Code	Describes agency expenditures on salaries, travel, and board member reimbursements as well as the agency's operating plan and annual budget.	Governor, Senate Finance Committee, House Appropriations Committee, Legislative Budget Board	Continue
3. Condition of Texas Banking Report	DOB, SML	Section 11.305(d), Texas Finance Code	Analyzes financial condition of the state's banking system.	Finance Commission	Continue
4. Financial Services Report	OCCC	Sections 11.305 and 342.559, Texas Finance Code Texas Constitution Article XVI 50(s)	Describes availability, quality, and pricing of certain financial services.	Legislature	Continue

## Recommendations

### *Change in Statute*

#### **7.1 Update the standard across-the-board requirement related to Finance Commission member training.**

This recommendation would require the Finance Commission to develop a training manual that each Finance Commission member attests to receiving annually, and require existing Finance Commission member training to include information about the scope of and limitations on the commission's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

#### **7.2 Apply the Sunset across-the-board recommendation regarding alternative dispute resolution to the finance agencies.**

This recommendation would require DOB, OCCC, SML, and the Finance Commission to develop and implement a policy to encourage alternative procedures for rulemaking and dispute resolution that conforms, to the extent possible, to model guidelines by the State Office of Administrative Hearings. This provision ensures that each of the finance agencies develop a written, comprehensive plan that applies

these procedures, when appropriate, to its rulemaking, internal employee grievances, interagency conflicts, contract disputes, and other appropriate conflict areas. Each of the agencies would also coordinate implementation of the policy, provide training as needed, and collect data concerning the effectiveness of these procedures. This recommendation would not be applicable to SML if the Sunset Commission adopts Recommendation 1.1 to abolish SML and consolidate its functions with DOB.

### **7.3 Authorize the finance agencies to establish advisory committees in rule as needed.**

This recommendation would authorize DOB, OCCC, and SML to create advisory committees, as needed, to provide special expertise. The Finance Commission should adopt rules regarding the agencies' committees in compliance with Chapter 2110 of the Texas Government Code, including

- the purpose, role, responsibility, and goals of the committees;
- the size and quorum requirement of the committees;
- qualifications of the members, such as experience or geographic location;
- the appointment procedures for the committees;
- the terms of service;
- training requirements;
- a process to regularly evaluate the need for each committee; and
- the requirement that the committees comply with the Open Meetings Act.

This recommendation would not be applicable to SML if the Sunset Commission adopts Recommendation 1.1 to abolish SML and consolidate its functions with DOB.

### **7.4 Continue the finance agencies' required reports.**

This recommendation would continue the finance agencies' existing reporting requirements, including the Self-Directed Semi-Independent Agency Annual Report, Self-Directed Semi-Independent Agency Biennial Report, Condition of Texas Banking Report, and Financial Services Report.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the state or the finance agencies.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Sections 325.011, 325.012, and 325.013, Texas Government Code.

<sup>2</sup> Section 325.011(13), Texas Government Code.

<sup>3</sup> Section 325.011(14), Texas Government Code; Chapter 683 (H.B. 8), Acts of the 85th Texas Legislature, Regular Session, 2017.

<sup>4</sup> Section 11.110, Texas Finance Code.

<sup>5</sup> Section 156.104, Texas Finance Code.

<sup>6</sup> Section 154.208, Texas Finance Code.

<sup>7</sup> Section 2110.008, Texas Government Code.

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# APPENDICES



# APPENDIX A

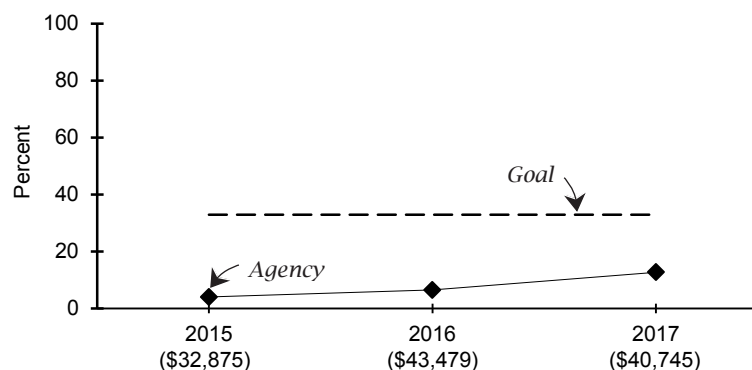
## **Texas Department of Banking Historically Underutilized Businesses Statistics 2015 to 2017**

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas Department of Banking's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

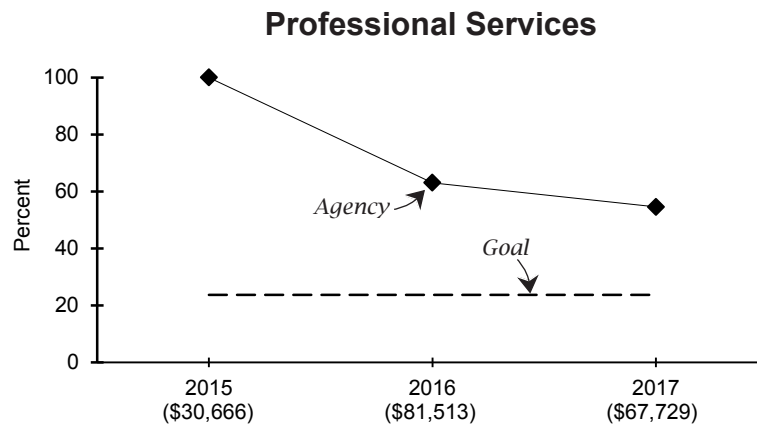
The Department of Banking failed to meet the state's goal for HUB spending in the special trade and other services categories each year from fiscal year 2015 to 2017. The agency exceeded goals for professional services and commodities in the same time period.

### Special Trade

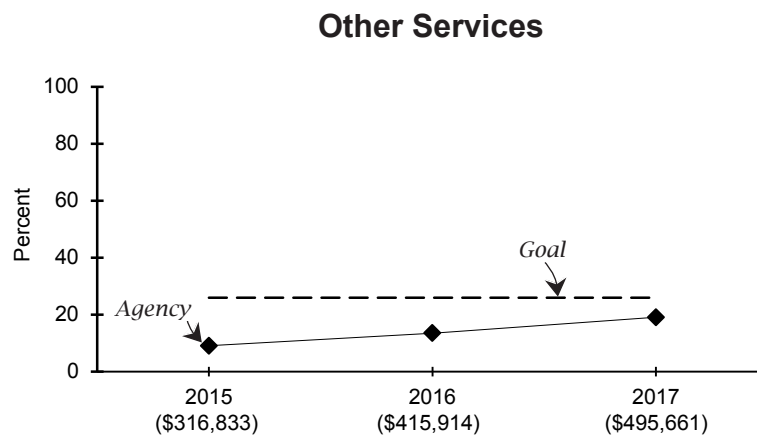


The agency failed to meet the state goal for special trade in each of the last three fiscal years.

## Appendix A



The agency exceeded the state goal for HUB purchases in this category for all three of the last fiscal years.

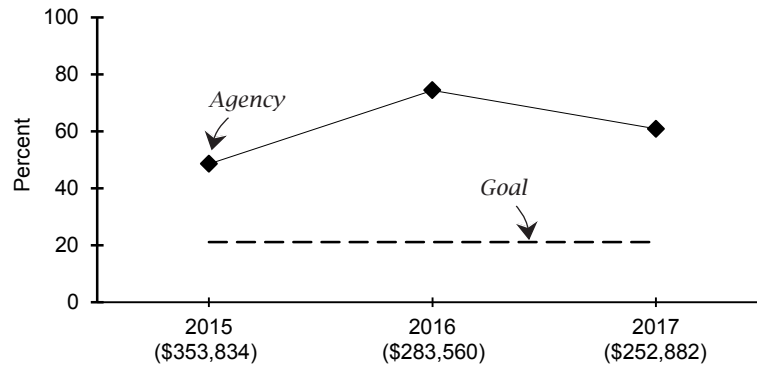


The agency did not meet the state goal for HUB purchases of other services in each of the last three fiscal years.



## Appendix A

### Commodities



The agency exceeded the state goal for HUB purchases in this category for all three of the last fiscal years.

.....  
<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

<sup>2</sup> Chapter 2161, Texas Government Code.

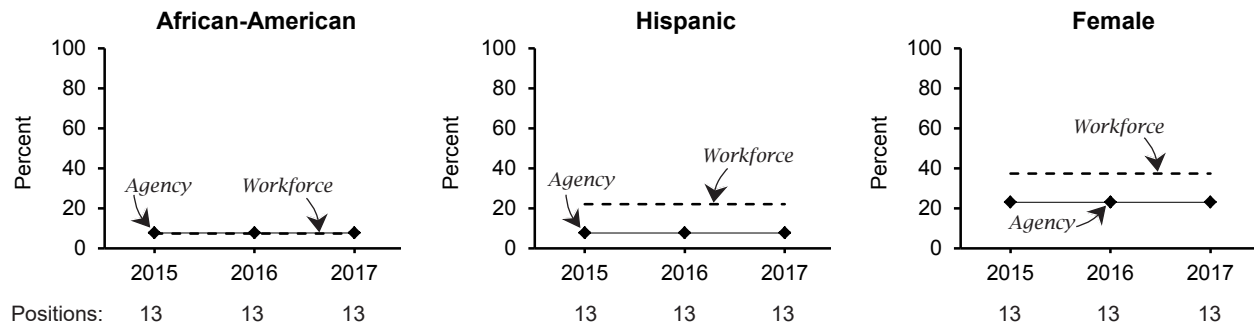


# APPENDIX B

## **Texas Department of Banking Equal Employment Opportunity Statistics 2015 to 2017**

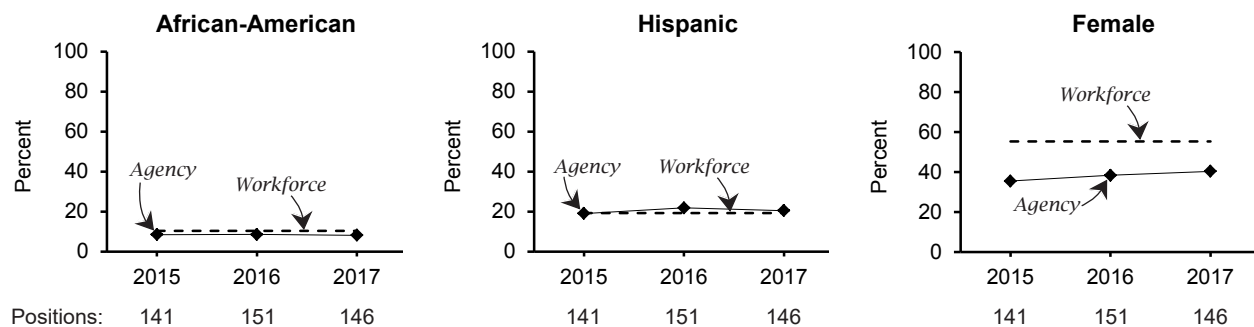
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Texas Department of Banking.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The Department of Banking consistently fell below civilian workforce percentages for female employees in the administration and professional job categories from fiscal year 2015 to 2017. The agency also consistently fell below civilian workforce percentages for African-American employees in the professional and administrative support job categories for the last three fiscal years.

### Administration



The agency fell below the civilian workforce percentages for Hispanics and females in this category in all of the last three fiscal years, but met the percentage for African-Americans.

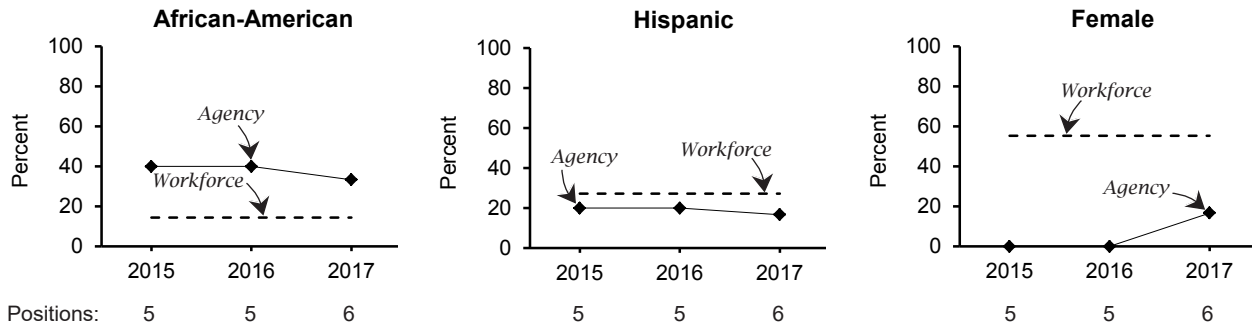
### Professional



The agency fell below the civilian workforce percentages for African-Americans and females in this category for all of the last three fiscal years, but met the percentage for Hispanics.

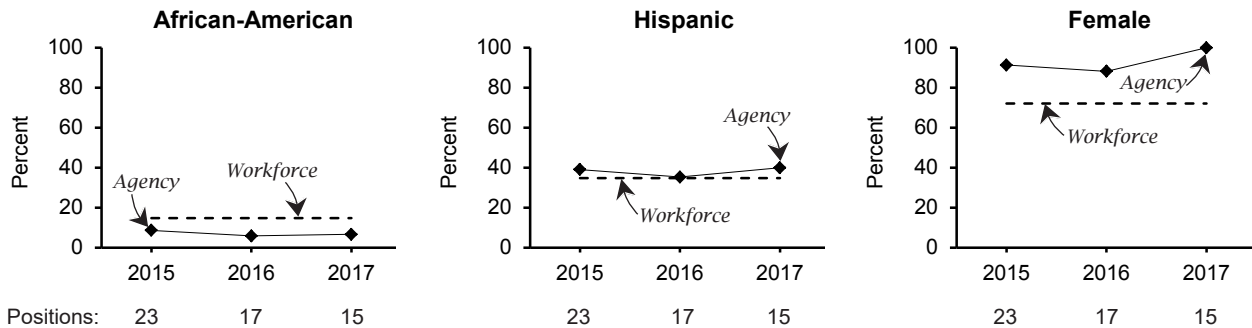
## Appendix B

### Technical



The agency fell below the civilian workforce percentages for Hispanics and females in this category in all of the last three fiscal years, but the agency employed few staff in this category. The agency exceeded the percentages for African-Americans.

### Administrative Support



The agency exceeded the civilian workforce percentages for Hispanics and females in this category for the last three fiscal years, but fell below the percentage for African-Americans. The agency employed few staff in this category.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

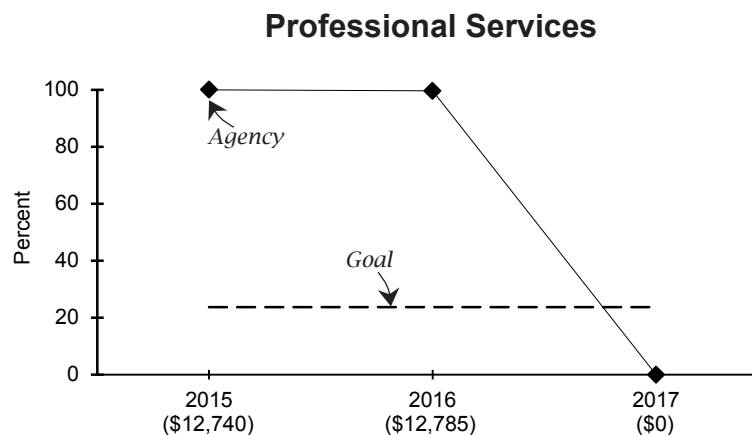
# APPENDIX C

## Office of Consumer Credit Commissioner Historically Underutilized Businesses Statistics 2015 to 2017

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

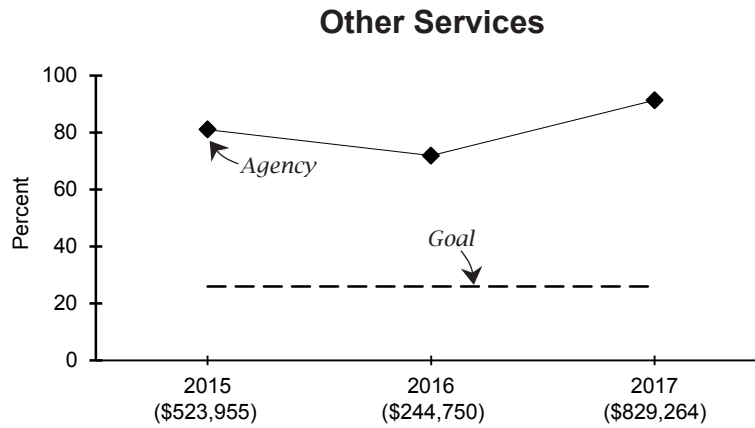
The following material shows trend information for the Office of Consumer Credit Commissioner's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The Office of Consumer Credit Commissioner exceeded the state's goal for HUB spending in the professional services, other services, and commodities categories each year from fiscal year 2015 to 2017. Expenditures in building construction and special trade were too low to include.

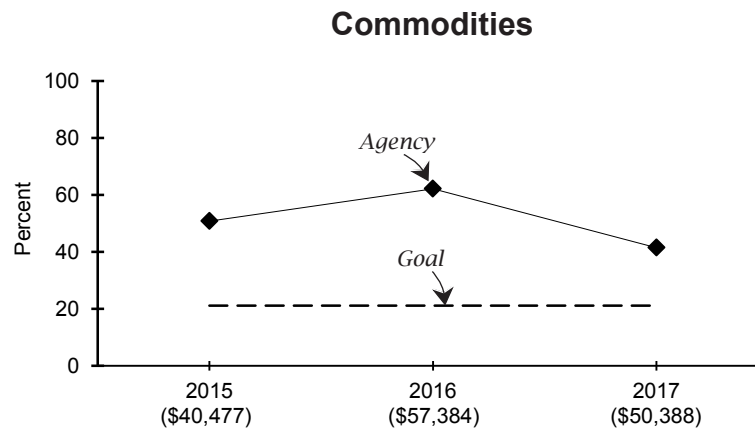


The agency exceeded the state goal for HUB purchases in this category in years with applicable spending.

### Appendix C



The agency exceeded the state goal for HUB purchases in this category for all three of the last fiscal years.



The agency exceeded the state goal for HUB purchases in this category for all three of the last fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

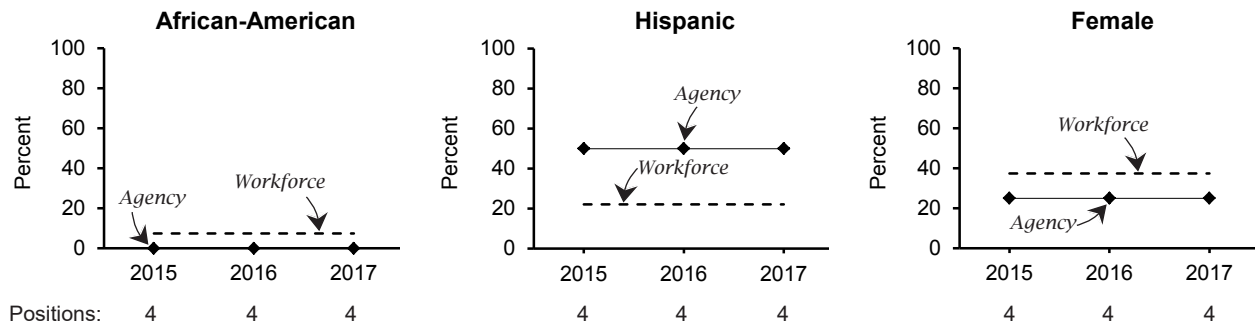
<sup>2</sup> Chapter 2161, Texas Government Code.

# APPENDIX D

## Office of Consumer Credit Commissioner Equal Employment Opportunity Statistics 2015 to 2017

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Office of Consumer Credit Commissioner.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The Office of Consumer Credit Commissioner consistently fell below civilian workforce percentages for female employees in the professional job category from fiscal year 2015 to 2017. The agency had mixed success meeting the civilian workforce percentages for African-American employees, Hispanic employees, and female employees in the administration and administrative support categories, categories in which the agency generally employed fewer people.

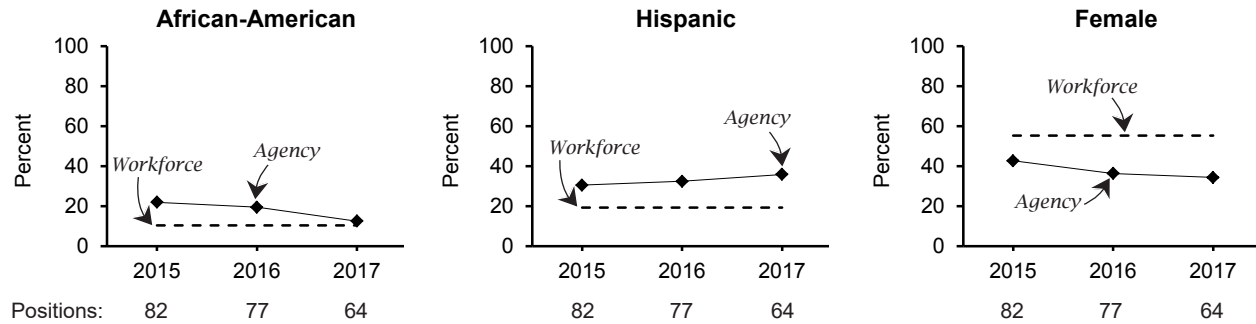
### Administration



The agency fell below the civilian workforce percentages for African-Americans and females in this category for the last three fiscal years, but exceeded the percentage for Hispanics. The agency employed few staff in this category.

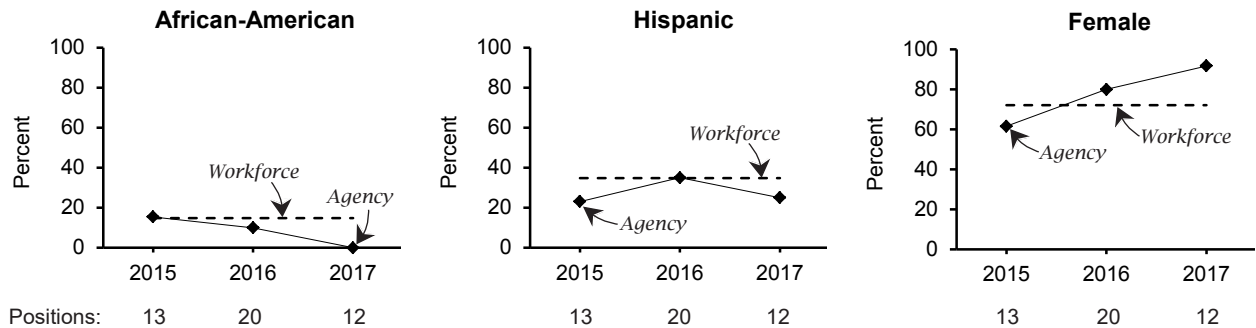
## Appendix D

### Professional



The agency exceeded the civilian workforce percentages for African-Americans and Hispanics in this category for the last three fiscal years, but fell below the percentage for females.

### Administrative Support



The agency exceeded the civilian workforce percentages for females in this category for the last two years. The agency fell below the percentages for African-Americans in 2016 and 2017 and Hispanics in 2015 and 2017.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.



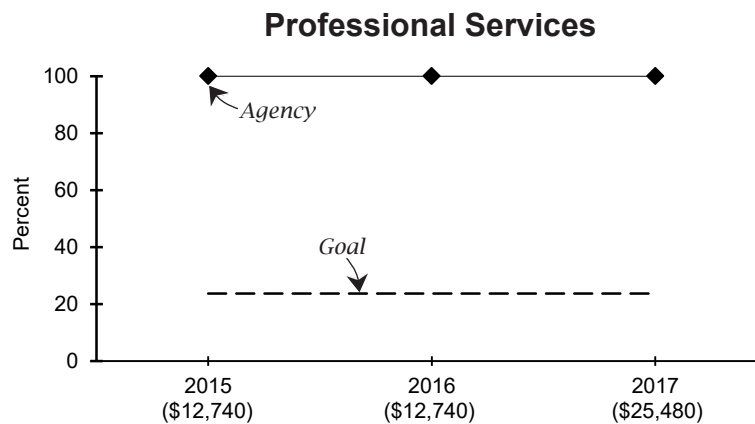
# APPENDIX E

## ***Department of Savings and Mortgage Lending Historically Underutilized Businesses Statistics 2015 to 2017***

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Department of Savings and Mortgage Lending's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2015 to 2017. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

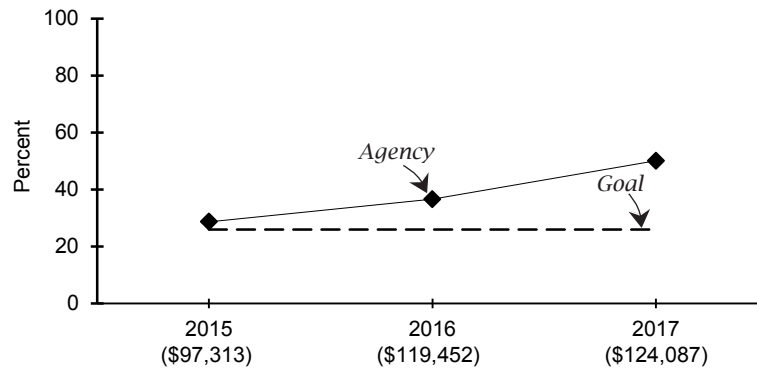
The Department of Savings and Mortgage Lending generally exceeded the state's goal for HUB spending in the professional services, other services, and commodities categories from fiscal year 2015 to 2017. Expenditures in special trade were too low to include.



The agency exceeded the state goal in this category in all of the last three fiscal years.

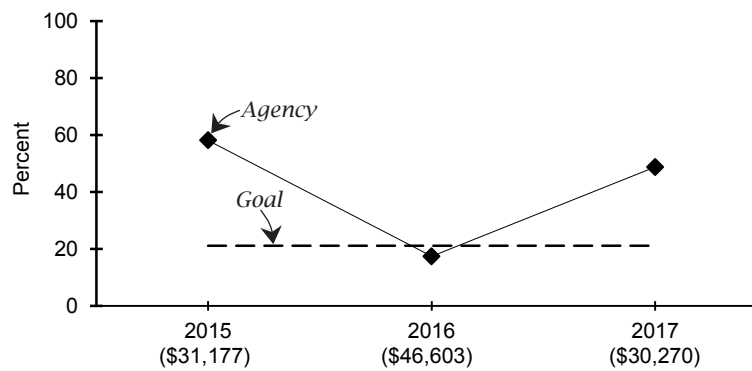
## Appendix E

### Other Services



The agency exceeded the state goal for this category for all three of the last fiscal years.

### Commodities



The agency exceeded the state goal for HUB purchases in commodities in 2015 and 2017, but fell just short in 2016.

1 All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

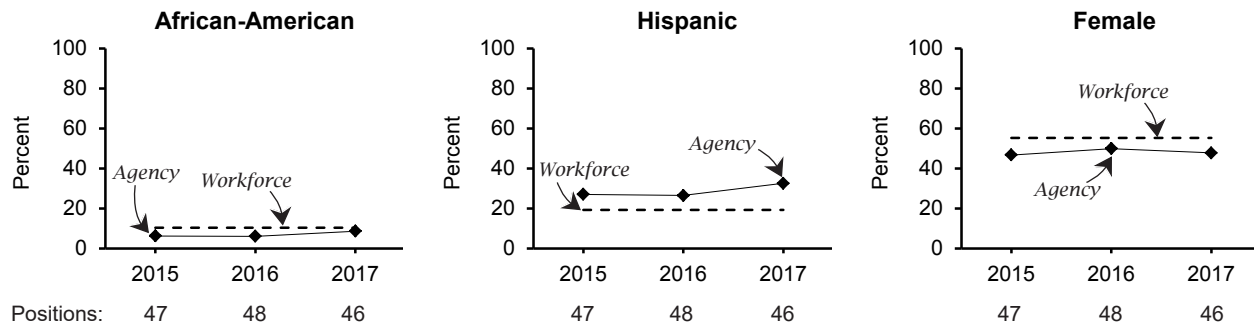
2 Chapter 2161, Texas Government Code.

# APPENDIX F

## Department of Savings and Mortgage Lending Equal Employment Opportunity Statistics 2015 to 2017

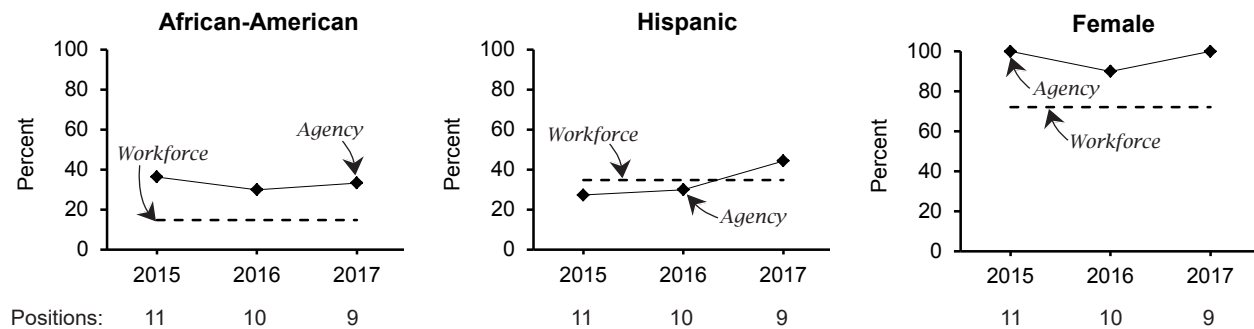
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Department of Savings and Mortgage Lending.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2015 to 2017. The Department of Savings and Mortgage Lending consistently fell below civilian workforce percentages for African-American employees and female employees in the professional job category from fiscal year 2015 to 2017.

### Professional



The agency fell below the civilian workforce percentages for African-Americans and females in this category for the last three fiscal years, but exceeded the percentage for Hispanics.

### Administrative Support



The agency exceeded the civilian workforce percentages for African-Americans and females in this category for the last three fiscal years. The agency exceeded the percentage in this category for Hispanics in 2017, but fell below in 2015 and 2016.

## *Appendix F*

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.

# APPENDIX G

## ***Staff Review Activities***

During the review of the Finance Commission of Texas, Department of Banking, Office of Consumer Credit Commissioner, and Department of Savings and Mortgage Lending, Sunset staff engaged in the following activities that are standard to all sunset reviews. Sunset staff worked extensively with agency personnel; attended commission meetings; met with staff from key legislative offices; conducted extensive interviews and solicited written comments from regulated entities, interest groups, and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; researched the organization and functions of similar state agencies in other states; and performed background and comparative research.

In addition, Sunset staff performed the following activities unique to these agencies:

- Observed bank, state savings bank, trust company, and credit access business examinations
- Toured two regulated lender offices and one pawnshop
- Reviewed a sample of bank and state savings bank examination files
- Attended the Department of Banking's financial examiner training



Sunset Staff Review of the  
*Finance Commission of Texas*  
*Texas Department of Banking*  
*Office of Consumer Credit Commissioner*  
*Department of Savings and Mortgage Lending*

————— *Report Prepared By* —————

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